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~~Affirmed~~
Revised and
assigned to Swayne J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 165.

GEORGE MATTINGLY, COMPLAINANT AND APPELLANT,

vs.

J. W. NYE, JOHN C. HARKNESS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 5, 1867.

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No. 165.

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VS.

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1 In the Supreme Court of the District of Columbia, the day of , 1866.

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk office of said court; and that said originals together constitute the record of the proceedings of said court, in a certain cause therein depending, and lately decided, entitlded George Mattingly *vs.* J. W. Nye *et al.*, No. 150, Equity.

In testimony whereof, I have subscribed my name, and caused the seal of the said Supreme Court to be hereunto affixed the day and year aforesaid.

[SEAL.] R. J. MEIGS, *Clerk.*

2 To the Honorable the Judges of the Supreme Court of the District of Columbia, sitting in equity:

George Mattingly bring this his bill of complaint against John W. Nye, Mary Nye, his wife, Mary and Luther Nye, children of said John W. Nye. John C. Harkness, Rebecca Pinckney, and Walter S. Cox; and thereupon, humbly complaining, showeth to your honors, your orator, George Mattingly, that your orator has at different times loaned various sums of moneys to the said John W. Nye, beginning as far back as the year, eighteen hundred and forty-three, which loans amounted, in the year 1853, to the sum of sixteen hun-
3 dred and fifty-five dollars, then justly due and owing by the said John W. Nye to your orator; and that the said J. W. Nye, at that time, not having the means of paying the said debt, nor any prospect of obtaining such means, except by the recovery of certain claims which he held against the United States, gave your orator an order on one John M. McCalla, his agent for collecting the said claims, for the sum of sixteen hundred and fifty dollars, no part of which was ever paid, except the sum of twenty-five dollars, which is credited on the back of the said order, herewith filed and marked exhibit A.

And your orator further showeth, that although, by an act of Congress, approved January 17th, in the year eighteen hundred and fifty-seven, the said J. W. Nye received from the United States three thousand and two hundred dollars in payment of a portion of the said claims, yet the said J. W. Nye did not pay any portion of the said debt to your orator, but fraudulently applied the money thus obtained for the said claim to the purchase of certain land in this city, as will hereinafter more fully appear.

And your orator shows, that although he had been thus de-
4 frauded by the said J. W. Nye, he vas induced to make him a further loan on the 21st day of July, 1860, when the said Nye gave your orator his written acknowledgment under seal, dated the 21st day of July, in the year 1860, for the sum of two thousand four hundred and fifty dollars, (hereto annexed, marked exhibit B,) which sum was the amount due from the said J. W. Nye to your orator.

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4 frauded by the said J. W. Nye, he vas induced to make him a further loan on the 21st day of July, 1860, when the said Nye gave your orator his written acknowledgment under seal, dated the 21st day of July, in the year 1860, for the sum of two thousand four hundred and fifty dollars, (hereto annexed, marked exhibit B,) which sum was the amount due from the said J. W. Nye to your orator.

And your orator further shows, that the said sum of twenty-four hundred and fifty dollars, not having been paid by the said J. W. Nye, or by any one in his behalf, your orator brought suit for the said sum, and on the 10th day of June recovered judgment against the said J. W. Nye for the sum of two thousand four hundred and fifty dollars, with interest from the 21st day of July, in the year 1860, till paid, and the costs of the suit; and that on the said judgment a writ of fieri facias was issued out of your honorable court directed to the United States marshal for this District, by whom the said writ has been returned "nulla bona," as will more fully appear by the records of this court, a short copy of which is hereto annexed, marked exhibit C.

And your orator shows that included in the whole amount recovered was the said sum of sixteen hundred and fifty dollars
5 due, as aforesaid, in the year 1853; and that the said judgment has never been paid, satisfied or discharged, but is still outstanding due and unpaid, and your orator does not know that the said J. W. Nye has any property, out of which his said judgment may be satisfied, other than that hereinafter mentioned.

And your orator further showeth, that after the larger part of the sum for which the said judgment was recovered was, to wit, 1650 dollars, and after the passage of the said act of Congress of January 17th, in the year 1857, and after the money therein appropriated had been received by the said J. W. Nye, to wit, about the 25th day of June, in the year 1857, the said John W. Nye, with the money so obtained from the United States, and due to your orator, purchased from Rebecca Pinckney that piece or parcel of ground lying and being in the city of Washington, District of Columbia, known or designated as lot number (30) thirty, in Davidson's subdivision of square number three hundred and sixty-seven, (367,) as the same is laid down in the book of the surveyor of said city.

And your orator showeth, that although the said J. W. Nye
6 was the real purchaser of the said lot, yet he, in order to defraud your orator of his said debt then due, fraudulently obtained the conveyance of the said property to be made to John C. Harkness (in trust for the sole and separate use of Mary Nye, wife of the said John W. Nye, and in default of any disposition of the said lot by her, to Mary Nye and Luther Nye, children of the said J. W. Nye and Mary Nye,) by a deed from the said Rebecca Pinckney, dated the 25th day of June, 1857, and recorded in Liber J. A. S. No. 137, folio 78, one of the lands records of Washington County, District of Columbia, which is prayed to be read as part of this bill, which conveyance your orator avers was made without any consideration from the said John C. Harkness or Mary Nye, but he charges that the whole purchase money was paid by the said J. W. Nye, and the said conveyance in trust was obtained for the purpose of defrauding your orator.

And your orator further showeth, that at the time of the purchase of the said lot, the said J. W. Nye, by the said J. C. Harkness, by a deed, dated the 2d of July, 1857, and recorded in Liber J. A. S., 137,

folios 47 and 48, one the land records of the said county, con-
7 veyed the said property to Walter S. Cox in trust, to secure the payment of these promissory notes, each dated June 25th, 1857, and each for the sum of one hundred and twenty-six dollars and 75-100, and payable in six, twelve, and eighteen months after the said date, drawn by the said John C. Harkness as trustee for the said Nye, and payable to the said Rebecca Pinckney, which notes your orator believes were given for the deferred payments of the purchase money of the said lot; and your orator charges that the said notes have been fully paid by the said J. W. Nye, but that no release for the said lot has been executed by the said Cox; all of which actings and doings are contrary to equity and tend to the manifest injury of your orator in the premises; in consideration whereof, and to end that the said John W. Nye, Mary Nye, his wife, John C. Harkness, Mary and Luther Nye, Walter S. Cox, and Rebecca Pinckney, may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, and belief, full, true, direct, and
8 perfect answer make to all and singular the matters aforesaid, as fully and particularly as if they were herein again repeated, and they, and each of them, thereunto specially interrogated, and that the said premises may be sold for the payment to your orator of his said judgment and the interest thereon, and that your orator may have such other or further relief as his case may require, may it please your honors to grant to your orator the writ of subpœna against John W. Nye, Mary Nye, Luther Nye, Mary Nye, John C. Harkness, Walter S. Cox, of this District commanding them personally to appear in this court, at a certain day to be therein named, to answer the premises, and to abide by and perform such order, direction, or decree as may be passed therein; and may it please your honors to grant to your orator also an order of publication, giving notice to the said Rebecca Pinckney, who is a non-resident of this District, of the substance and object of this bill, and warning her to appear in this court on or before a certain day to be therein named, to answer the premises, and show cause, if any she has, why a decree ought not to be passed as prayed.

And your orator, as in duty bound, will ever, &c.

BEALE, *For Compl't.*

9 *Exhibit A.—Filed Feb'y 6, 1864.*

WASHINGTON, *Nov. 2d*, 1853.

Gen. JOHN M. MCCALLA.

SIR: You will pay George Mattingly, or order, fourteen hundred and fifty-five dollars out of my claim against the United States, as asignee of Peter Bargy, jr., and Hughes Stewart, for McAdamizing Penn'a avenue, whenever you may obtain said claim from the government of the United States, as my agent and attorney for the prosecution and receiving said claim.

J. W. NYE.

Endorsements on the above order.

Presented to me for payment this 2d day of November, 1853, and will be paid in its order out of such funds of J. W. Nye as may come to my hands out of the claims designated therein.

JNO. M. McCALLA,
Att'y in fact.

July 5, 1862, page 75, Stat at Large. $1,454 84 for horses, etc., for House of Rep's; 3,442 44 for improvements in botanical lot, and for damages sustained by being deprived of use of the lot leased by Pres. of U. S.

Jan'y 17, 1857. 3,200 for improvements of publics grounds.

10 *Exhibit A.—(Continued.)*

WASHINGTON, *Nov. 2d*, 1853.

Gen. JOHN M. McCALLA.

SIR: You will pay George Mattingly, or order, two hundred dollars out of any money that may come into your hands, as my attorney and agent, for two claims I hold, one against the United States, as asignee of Peter Bargy, jr., and Hugh Stewart, for McAdamizing Penn'a avenue; the other against the House of Representatives, under a contract for furnishing horses and carryals for the use of said house during the 28th Congress. The above two hundred dollars to be paid out of the first money you may obtain on either claim, after reserving five hundred dollars to pay a former order I have given on you for that amount, said two hundred dollars being for value received.

J. W. NYE.

Endorsement: Presented to me for payment this 2d day of November, 1853, and will be paid in its order out of such funds of J. W. Nye as may come to my hands out of the claim designated therein.

JNO. M. McCALLA,
Att'y in fact.

Endorsement: Twenty-five dollars of the withim am. paid me this day b. Jno. M. McCalla.
December 26, 1854.

GEO. MATTINGLY.

11 *Exhibit B.—Filed Feb'y 6,'64.*

For and in consideration of twenty-four hundred and fifty dollars, to me in hand paid by George Mattingly, the receipt whereof I hereby acknowledge, I hereby assign unto the said George Mattingly, [the receipt whereof I hereby acknowledge, I hereby assign unto the said

George Mattingly,] his heirs, or [or] assigns, twenty-four hundred and fifty dollars of a certain claim against the United States, as the assignee of Peter Bargy, jr., and Hugh Stewart, for losses sustained in McAdamizing Pennsylvania avenue, in Washington City, in 1832, which claim passed the Senate of the United States at the late session of the present (36th) Congress, and is now on the speaker's table, in the House of Representatives.

And the Secretary, or proper accounting officer of the treasury, is hereby authorized and required, whenever said claim shall be payable at the treasusy, or in case either of my other claims I hold against the government, one for improving a lot of public ground, and the other for furnishing horses and carryals for the use of the 28 Congress, should pass Congress, and be payable at the treasury before the avenue claim, the Secretary, or proper accounting officer, of the treasury, is hereby authorized and required to pay the above twenty-four hundred and fifty dollars to the said George Mattingly, his heirs or assigns, out of the first money that may be payable in either of the above claims, before one dollar is paid to me or any other person.

12 And whereas, by a law of Congress, to make the assignment of a claim against the government valid at the treasury, the claimant, in whose name Congress passes the claim, must after Congress has passed said claim, make a due assignment thereof, I hereby obligate myself, and bind my heirs, executors, administrators, or assigns, as soon as either of the aforesaid claims shall have passed Congress, and before they shall be settled at the treasury, to renew the aforesaid assignment and give it legal force and validity.

In testimony whereof, I have hereunto set my hand and seal this twenty-first day of July, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] J. W. NYE.

DISTRICT OF COLUMBIA, *Washington County, to wit*:

Be it remembered that on this 21st day of July, A. D. 1860, before me, the subscriber, a justice of the peace, in and for said county, personally appeared J. W. Nye, and acknowledged the foregoing instrument of writing to be his act and deed.

Taken before me and certified by—

[SEAL.] F. J. MURPHY, *J. P.*

Exhibit C.

13 In the Supreme Court of the District of Columbia, February, 1864.

Summons to answer.—Issued 6th Feb., '64.

GEORGE MATTINGLY, complainant,
against.
JOHN W. NYE and others, defendants. } No. 150. Equity.

The President of the United States to John W., Mary, Luther, and Mary Nye, jr., and Walter S. Cox, Rebecca Pinckney, and John Harkness, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness David K. Carter, chief justice.

R. J. MEIGS, *Clerk.*

Memorandum.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's endorsement.—Returned February 11th, '64.

Non-est. Rebecca Pickney. Sum'd the others.
Feb'y 10th, 1864.

W. H. LAMON, *Marshal.*

14 Supreme Court of the District of Columbia.

Order of publication.—Filed Feb'y 6, '64.

GEORGE MATTINGLY
against.
J. W. NYE, REBECCA PINKNEY, and others. } No. 150. In equity.

The object of this suit is to procure a decree for the sale of lot number 30, in Davidson's subdivision of square No. 367, in Washington city, District of Columbia, for the payment of a judgment against J. W. Nye. The bill in substance states that on June 10th, 1863, George Mattingly obtained a judgment against J. W. Nye for the sum of $2,450 00; and that the said J. W. Nye, is, in fact, the owner of the said lot 30, in square 367; and that on the 2d day of July, 1857, a deed of trust was executed by J. C. Harkness, acting as trustee for said Nye, conveying the said lot to Walter S. Cox, to secure the payment of three promissory notes, each dated June 25th, 1857, each for the sum of $126 75, and payable in 6, 12, and 18 months after date, drawn by J. C. Harkness, as trustee, payable to Rebecca Pinckney, and the bill charges that the said notes have been fully paid and that no release of the lot has been executed.

The bill prays for a decree for the sale of the said lot to
15 satisfy the said judgment and general relief; and it appearing to the satisfaction of the court that the said defendant, Rebecca Pinkney, is a non-resident of the District of Columbia, it is this 6th day of February, 1864, ordered by the court that notice of the object of this suit and the substance of the bill of complaint be given to the said non-resident defendant by publishing a copy of this order in the National Intelligencer once a week, for six successive weeks, warning the said non-resident, defendant, to appear at rules to be held at the office of the clerk of this court on the first Tuesday of July, 1864, and to answer the said bill of complaint; otherwise the bill will be taken pro confesso by her, provided the first publication of this order shall appear at least four months before the first Tuesday of July, in the year 1864.

GEO. P. FISHER,
Jus. S. C. D. C.

Proof of publication.—Filed July 11, '64.

OFFICE OF THE NATIONAL INTELLIGENCER,
Washington, July 7, 1864.

We hereby certify that the advertisement, of which the annexed is a copy, was published in the National Intelligencer once a week for six successive weeks, commencing 20th day of February, 1864.

For GALES & SEATON,
JAS. W. BELL.

DISTRICT OF COLUMBIA, *County of Washington, sct*:

16 Personally appeared before me, the subscriber, a justice of the peace in and for the district and county aforesaid, Jas. W. Bell, and makes oath that the aforegoing certificate is correct and true.
July 7, '64.

THOS. DONOHO,
Justice of the Peace.

In the Supreme Court of the District of Columbia.

Decree pro confesso vs. Rebecca Pinkney.—Filed July 11, 1864.

GEORGE MATTINGLY
vs.
JOHN W. NYE and others. } No. 150. In equity.

The order of publication heretofore passed in this cause, having been duly published, giving notice of the object of the suit to Rebecca Pinkney, one of the defendants, and the said defendant having failed to appear and answer the bill of complaint, it is, therefore, this 11th day of July, 1864, by this court adjudged, ordered, and decreed that the said bill of the said complainant be, and the same is hereby, taken pro confesso against the said Rebecca Pinkney.

By order of the court.

Supreme court of the District of Columbia.

Decree for sale, &c.—Filed 7 Oct., '64.

GEORGE MATTINGLY
vs.
JOHN W. NYE, REBECCA PINKNEY, *et al.* } No. 150. In equity.

17 The order of publication against Rebecca Pinkney, heretofore passed in this cause, having been duly published, and the other defendants having been duly summoned, and all the said defendants having failed to appear and answer the bill of the complainant, it is thereupon, this 7th day of October, 1864, ordered, adjudged, and decreed by the court that the said bill of the complainant be, and the same is hereby, taken pro confesso against the said defendants, and that Robt. M. Beale be appointed trustee to sell the real estate mentioned in the bill of complaint, to wit, lot No. 30, in Davidson's subdivision of square three hundred and sixty-seven, (367,) in the city of Washington, District of Columbia, to satisfy the judgment as prayed in the said bill of complaint, he first giving notice thereof by publishing in some newspaper published in the said city three times a week for two weeks before the sale; the terms of the sale to be one-third in cash, and the remainder in well secured notes, payable in six and twelve months from the day of sale; and that the trustee retain the proceeds of the sale subject to the future order of this court, provided that the said Robt. M. Beale first give bond with good security, in the sum of six thousand dollars, conditioned for the faithful performance of the trust hereby committed to him.

By order of the court.

18 *Trustees' bond.—Filed 11 Oct., '64.*

Know all men by these presents that we, Robt. M. Beale and George Mattingly. of the city of Washington, District of Columbia, are held and firmly bound unto the United States in the sum of six thousand dollars, to be paid to the said United States, to which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents; whereas by a decree of the Supreme Court of the District of Columbia, sitting in chancery, bearing date the 7th day of October, in the year 1864, and passed in a cause wherein George Mattingly is complainant, and John W. Nye and others are defendants, the above-bound Robt. M. Beale has been appointed trustee to make sale of certain real estate in the proceedings in the said cause mentioned: Now, the condition of this obligation is such, that if the said Robt. M. Beale do and shall well and faithfully perform the trust reposed in him by the said decree, or that may be reposed in him by any future decree or order in the premises,

then the above obligation is to be void; otherwise to remain in full force and effect.

Dated this 8th day of Oct., 1864.

[SEAL.] ROBT. M. BEALE.
[SEAL.] GEO. MATTINGLY.

Approved this eleventh day of October, A. D. 1864.

D. K. CARTER, *Ch'f Justice.*

19 In the Supreme Court of the District of Columbia.

Answer of Jno. C. Harkness.—Filed 19 *Oct.*, 1864; *refiled* 15 *Dec.*, 1864.

JOHN C. HARKNESS *a. t. s.* GEORGE MATTINGLY. } In equity. No. 150.

The answer of John C. Harknes to the bill of complaint of George Mattingly, in this court:

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit of saving, exception, and advantage to the errors and uncertainties in said bill, says:

He has no knowledge of the facts set up in the said bill as to the indebtedness of the said John W. Nye, in said bill named, to the said complainant or the said judgment set up in the said bill as having been recovered by the said complainant against said John W. Nye, except upon information, hearsay, and belief; but he offers himself ready to show and prove that the said John W. Nye was not at the time of the execution and delivery to him, this defendant, by the said Rebecca Pinkney, of the deed of trust conveying to this defendant the real estate named in said bill, indebted to the said George Mattingly in any sum of money whatever, and he denies that the said deed of trust was executed for the purpose of hindering, delaying, or defrauding the said George Mattingly, and avers that the same was made bona fide, on a good consideration, and under circum-
20 stances which rendered it just, fit, and proper that the same should be executed and delivered.

And further answering, and by way of explanation, and more clearly showing to the court his connection with and knowledge of these transactions, he says:

The said John W. Nye, and Mary, his wife, lived in the city of Washington, in the neighborhood of this defendant, and he had frequent and varied opportunities to see and know the destitution and need of the family, and the infirm and broken health of the said Mary; that the said John W., in the year 1857, and while he was so living in the neighborhood of this defendant, had pending before Congress a claim for compensation for certain property belonging to him, which had been taken by the government for public use; that the said George Mattingly was alleged or supposed to have some claim on said Nye, and to know something of the merits of said Nye's said claim, and was called upon to state what he knew of the value of said Nye's interest in the property so taken for the public use, and thereupon,

the said George Mattingly made in writing a statement to the effect that said Nye had before then fully settled with him, and did not owe him a cent; and this defendant files herewith a true
21 copy of said written statement, marked H No. 1, which he is ready to verify and prove, according to the usage and practice of this court.

He further says that the said written statement of the said Mattingly was filed with the committee of Congress before whom the said claim of said Nye was pending, and was reported by said committee as part of the evidence on which they based a bill for the relief of said Nye, which bill was passed by Congress, and the money appropriated and paid to said Nye, and he exhibits the report of said committee, marked H No. 2.

And in further proof of the bona fide of the said transaction, and that said Mattingly then had no claim on the said Nye, he says the creditors of said Nye were diligently watching the acts of Congress on said petition of said Nye, and the allowance thereof, and so soon as the same was allowed and paid the proceeds thereof were placed by said Nye in the hands of this defendant to pay his said creditors, which was, he believes, some time in the month of January, 1857, and he did, in fact, apply the same to the payment of all the debts of said Nye which were presented to this defendant, and the said Mattingly did not then present any claim to this defendant, nor did this defendant hear one word of his naving any claim upon said
22 Nye.

He further says that after this, and not before, he well believing, as he does on information and hearsay believe, that said Mattingly had no claims upon the said Nye, interested himself in securing for said Mary Nye and her children a shelter and home, and was mainly instrumental in procuring the said deed of trust to be executed by said Rebecca Pinckney, by which the property therein mentioned was intended to be secured against the contingencies of any future recklessness or want of care in said John W. Nye.

He admits that the said property was purchased with the means furnished by said Nye alone; that the three promissory notes to secure the payment of which the deed of trust to said Walter S. Cox in said bill named was made, were given as stated in said bill, and have been paid, and, so far as he is informed and believes, there is no incumbrance on said property.

This defendant further says, he is informed that a decree pro confesso has been entered in this case on the 7 October instant, and made absolute, ordering sale of the said property, appointing R. F. Beale, esq., to make said sale, and that said Beale hath advertised the
23 said property for sale. And this defendant says, and shows to this honorable court, that the said decree was entered by surprise, and he avers and declares that it was through no fault of his, nor from any want of respect and deference to this honorable court that his answer was not filed in due time. And, in excuse therefor, and explanation thereof, he says that so soon as the subpœna in this cause was served on him, he consulted his present solicitor, placed

in his hands the papers necessary to prepare his answer, requested him to prepare the same, and he then undertook to do so in proper time, of which he would notify this defendant, that he might make affidavit to the same; that he was subsequently informed by his said solicitor, that he had had an interview with the said complainant, Mattingly had reminded him of his said written statement, and shown him a copy thereof, and understood from said Mattingly that he would not proceed further in this case, but would take some other remedy to make his judgment, and therefore it was not necessary to incur the costs of filing an answer, and for this reason, and this reason alone, no answer was filed, and the decree pro confesso entered against the defendant.

He is informed that, inasmuch as the decree was entered at
24 the present existing term of this honorable court, it is still within its control and may now be opened; and he prays that the said decree may be set aside and this answer filed, he hereby tendering himself ready to have the case heard at the present term of the court.

And having fully answered, he prays to be hence dismissed with his costs.

JOHN C. HARKNESS.

JOS. H. BRADLEY, *Sol. for Def't.*

DISTRICT OF COLUMBIA, *Washington County, to wit*:

John C. Harkness, whose name is signed to the foregoing answer in chancery, appeared before me, the subscriber, this 18th day of October, 1864, and made oath according to law that the facts therein stated, as of his own knowledge, are true, and he believes those to be true which are stated on the information of others.

JOHN C. HARKNESS.

Sworn and subscribed before me Oct. 18, 1864.

R. J. MEIGS, *Clerk.*

(Fee, 30 cents; paid by def't.)

[5 cent. int. rev. stamp, cancelled.]

Order to show cause, &c.—Filed Oct. 26, '64.

25 GEORGE MATTINGLY
vs.
JOHN W. NYE and others. } No. 150.—In equity.

The answer of the defendant, Harkness, having been tendered in this case, and the same being read by the court, it is hereby ordered that said Harkness have leave to file the same, and that the sale advertised by the trustee, heretofore appointed in this cause, be, and the same is hereby, postponed until the further order of this court.

And it is further ordered, that the complainant show cause, on or before the tenth day of December next, why the decree heretofore

entered in this cause shall not be set aside, and the cause proceeded in for further proof, provided a copy of this order be served on the complainant, or his solicitor in this cause, on or before the 27th day of October inst.

By order of the court:

22 Oct., 1864.

Served copy of this order on George Mattingly this 27th of October, 1864.

W. H. LAMON, *Marshal.*

Marshal's endorsement: Ret'd 27 Oct., 1864.

26 In the Supreme Court of the District of Columbia.

Answer of J. W. Nye.—Filed Dec. 15, '64.

JOHN W. NYE *ats.* GEORGE MATTINGLY. } In equity.—No. 150.

The answer of J. W. Nye to the bill of complaint of George Mattingly filed in this court:

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit of saving, exception, and advantage to the errors and uncertainties of said bill, says:

That, as alleged in the bill of complaint, he received, during the year 1843, and up to the year 1853, from the complainant, at various times, small sums of money, for the use of which complainant charged him as high as five per centum per month, and to secure the payment of said money so received, and the interest thereon as aforesaid, he, this defendant, gave a certain order to complainant on one John M. McCalla, this defendant's attorney, to pay to him, said complainant, the sum of fourteen hundred and fifty-five dollars out of any moneys that might come into his, the said McCalla's, hands from a certain claim which this defendant then held against the

27 United States as asignee of Peter Bargy, jr., and Hugh Stewart, contractors for McAdamizing Pennsylvania avenue, in the city of Washington, which order was dated November 2d, 1853, and was accepted by said complainant as a full satisfaction of all claims whatever against this defendant up to that time; and this defendant further says, that on the same day aforesaid, after a settlement was made between the defendant and the complainant, and giving said order, the complainant advanced him a further sum of money, to the amount of one hundred dollars, for the satisfaction and payment of said money so advanced this defendant gave the complainant another order on the said John M. McCalla, attorney as aforesaid, for the sum of two hundred dollars, to be paid out of the money arising either from the Peter Bargy, jr., and Hugh Stewart claim, or from any monies which might come into his, the said McCalla's, hands

from a certain other claim which this defendant held against the House of Representatives of Congress, arising out of a con-
28 tract for furnishing horses and carryalls for the use of said House of Representatives, during the 28th Congress, which was accepted by said complainant as a full satisfaction and payment of the one hundred dollars so advanced as aforesaid; and this defendant further says, that at the time of making the orders and accepting them as aforesaid, he gave no other order whatever than the two mentioned in the bill of complaint, and which are marked as Exhibit "A," and filed with said bill; and he further says, that at the time of giving the orders aforesaid it was distinctly understood with complainant that said orders should be paid out of the money arising out of either the Peter Bargy, jr., and Hugh Stewart claim, or the claim arising out of the contract with the House of Representatives, as mentioned in the orders aforesaid, whenever Congress should make an appropriation for the payment of said claims, and not out of any other money which Congress might appropriate for the payment of any other claim which this defendant held at that time, or
29 should hold at any other time, against the United States.

And this defendant further says, that subsequent to the order aforesaid he received, by an act of Congress, and appoved January 17, 1857, from the United States the sum of three thousand and two hundred dollars in part payment of another claim which this defendant had against the United States for improvements made upon certain grounds belonging to the government, and which were taken public use, and in which claim the said complainant, on the 5th day of January, 1857, when requested to state the merits of said claim, and whether he had any interest in the same, declared in writing that he had no interest whatever in said claim, and in effect that he, the said complainant, had settled with this defendant, and that this defendant did not owe him one cent; and this defendant files herewith a true copy of this statement, marked "H," No. 1, which he is ready to verify and prove, according to [to] the usage and practice of this
30 court; and this defendant further says, that the said written statement of said complainant was filed with the committee of Congress, and was reported by said committee as a part of the evidence on which they based a bill for the relief of this defendant; and further, at the time of the passage of said bill, and the approval of the same, this defendant did not owe the complainant anything whatever; that the money which this defendant received under this act of Congress was applied to the payment of all debts due by this defendant, including those barred by the statute of limitation, as well those not thus barred, and that he took particular care to find out all of the creditors, and that after paying them all, he placed the balance of said money in the hands of John C. Harkness, of the city of Washington, with instructions to pay any claim which this defendant might have overlooked; and that having so placed the money in the hands of the said Harkness, he further instructed him, after paying any other claim which might be presented to him, the
31 said Harkness against this defendant, to invest the residue of

said money in purchasing a home for his, this defendant's, family, which was at that time in a very destitute condition, and not for the purpose of defrauding this complainant, as alleged in the bill of complaint; and he further says that this transaction was publicly known at the time when he drew the money aforesaid from the Treasury of the United States, and placed it in the hands of the said Harkness as aforesaid, and that at the time when Congress made said appropriation the complainant had full opportunity of knowing the proceedings of Congress in reference to said claim, and of this defendants drawing and applying the money as aforesaid; and that the said complainant made no demand or claim whatever to said money, either from this defendant or the said Harkness, as he verily believes; and this defendant further says, that the money so deposited in the hands of said Harkness as aforesaid, remained there after paying all debts, until the 25th day of June, 1857, when the said Harkness purchased with the residue of said money a home and shelter for the then suffering family of this defendant, and at the time of the purchase made by the said Harkness, and at the time of the execution of the
32 conveyance mentioned in said bill of complaint by the said Rebecca Pinkney to the said Harkness, in trust for the sole and separate use of Mary Nye, wife of this defendant, for lot No. 30 in Davidson's subdivision of square 367, as laid down in the books of survey of Washington city, he, this defendant, did not owe the complainant anything whatever; and this defendant says further, that the said purchase was made and the conveyance executed for the same more than three years prior to the date of the execution of the sealed instrument of writing, marked as Exhibit "B," and filed with the bill of complaint, purporting to have been executed by this defendant; and this defendant further says, that afterwards, to wit, in July, 1860, more than three years after the purchase made by the said Harkness aforesaid, when the claim for McAdamizing Pennsylvania avenue, out of which, at the time of the settlement aforesaid, this defendant gave the complainant the orders upon the claims and for the money therein specified, and which were accepted as full payment and satisfaction as aforesaid passed the Senate of the United States, and had received the unanimous consent of the com-
33 mittee of the House of Representatives, to which it had been referred, the complainant, in order to secure a large interest in this defendant's claims then pending before Congress, gave him a further consideration of two hundred dollars, for which consideration this defendant made an assignment on the 21st day of July, 1860, for the purpose therein specified, to the complainant, and which is marked as Exhibit "B," filed with the bill in the case, and he says this assignment was intended to refer to appropriation which Congress might make after the date of said assignment, and not to any made prior to the execution of the same.

And this defendant further says, by way of explanation, that at the time the suit mentioned in this bill was instituted against him, he was laboring under great nervous excitement, and when the trial of the same came on was confined to his bed with typhoid fever, which pre-

vented him from attending to the trial of said suit, and in which he had a good defence, judgment was rendered against him by default: and this defendant says, by way of further explanation, that in consequence of information which he received after the service upon him of the time of filing his answer expired, the complainant did not intend to proceed any further under said bill, his answer was
34 not filed in due time, and that it was not for want of any respect or deference to this honorable court that the delay of filing his answer was occasioned; and this defendant says, that having fully answered the said bill, prays this honorable court to be dismissed, with as little cost to him as possible.

J. W. NYE.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Jonas W. Nye, whose name is signed to the foregoing answer in chancery, appeared before me, this 3d day of Nov'r, 1864, and made oath according to law that the facts therein stated, as of his own knowledge, are true, and he believes those which are stated on information of others are also true.

R. J. MEIGS, *Clerk.*

Order setting cause for hearing, Nov. 5, 1864.

GEORGE MATTINGLY
vs.
J. W. NYE *et al.* } 150. Equity.

On motion of Mr. Johnson, solicitor for defendants, this cause is set for hearing on and after 1st Tuesday of December, 1864.

Order setting aside decree.—Filed 15 *Dec.* '64.

GEORGE MATTINGLY
vs.
HARKNESS, NYE, AND OTHERS.

On the hearing of the motion heretofore made in this cause
35 by the defendant, John C. Harkness, due notice whereof appears to have been given to said complainant, and he appearing by his solicitor in this cause, and the court having heard the arguments of counsel thereon, and duly considered the same, it is, this 15 day of December, 1864, by the court ordered that the decree hereinbefore passed in this cause on the 7th day of October last past, be, and the same is hereby, set aside, and the defendants have leave to file their answers, conditioned that they shall on their part speed the cause to a final hearing at as early a day as may be practicable after the complainant shall have filed his replications thereto, and in default of such replications being filed on or before the next rule day, the said cause be, and the same is hereby, set down for hearing on bill, answers, and exhibits, on the 2d Tuesday of January next.

By order of the court.

Supreme Court of the District of Columbia.

Replication.— Filed Dec. 27, 1864.

GEORGE MATTINGLY *vs.* J. W. NYE *et al.* } No. 150. Equity.

The plaintiff in this cause hereby joins issue with the defendants, J. W. Nye and J. C. Harkness, and proceed to take testimony.

COX & BEALE.

Supreme Court of the Dist. of Columbia.

Order app'g W. R. Woodward special ex'r.

MATTINGLY *vs.* NYE. } 150. Equity.

It is, this 27th day of December, 1864, ordered by the court that a commission issue to W. R. Woodward, appointing him special examiner to take testimony in this cause.

By order of the court.

36 *Order setting cause for hearing.*

GEORGE MATTINGLY *vs.* J. W. NYE *et al.* } No. 150. In equity.

On motion of Robt. M. Beale, solicitor for the complainant, it is, this 11th day of March, 1865, ordered by the court that this cause be set for hearing on the first day of the next special term of this court, and that the defendants be allowed until that time to conclude the taking of testimony on this behalf.

By order of the court.

MATTINGLY *vs.* NYE. } No. 150. In equity.

It is agreed by the solicitors for the complainant and defendants that the depositions taken before W. R. Woodward, esq., special examiner in this cause, may be read in testimony, as well as if properly certified by the said Woodward, he being unable so to certify to said deposition on acccount of sickness.

J. L. JOHNSON, *Sol. for Def't.*
BOB'T M. BEALE, *Sol. for Compl't.*

37 *Bill of sale.*

Know all men by these presents that I, J. W. Nye, of the city of Washington and District of Colnmbia, for and in consideration of the sum of eight hundred dollars, to me in hand paid by

George Mattingly, of the city and District above named, the receipt thereof I do hereby acknowledge, have bargained, sold, and conveyed unto the said George Mattingly, and by these presents do bargain, sell, and convey unto the said George Mattingly, his heirs, executors, administrators, or assigns, the following property, to wit: Two large sorrel horses, called John and Bill; one large bay mare, called Belle; one bay horse colt, called Abdallah; one large silver-grey horse, called Tom Hobbs; two sets of brass-mounted two-horse harness, one two-horse carriage, and one two-horse carriage body, all of which are now in my possession, and running gears for said body; one buggy, one two-horse wagon and cart. I am now about having completed, and hereby obligate myself to have completed during the ensuing summer, also, one new set of cart-harness, and the use of a lot of ground leased to me by the President of the United States on the twenty-ninth day of April, 1843, and all
38 the buildings and improvements thereon, during the term I hold said lease, and also to erect for the said Mattingly a carriage-house and stable, forty by twenty-eight feet, said Mattingly furnishing the materials for the same, said lot of ground lying and being bounded north by Penn'a avenue, east by Tiber creek, and west by 3d street, said Nye to have the use of said lot of ground, carriage-house, and stable by paying to the said Mattingly fifteen dollars per month therefor.

The condition of the above obligation is such, that if the said Nye shall well and truly pay, or cause to be paid, unto the said Mattingly, his heirs, executors, or assigns, fifteen dollars per month from the date hereof, and eight hundred dollars on or before the thirty-first day of July, eighteen hundred and forty-four, then the said Mattingly, on the payment of the full sums of money above specified, is to surrender up, reconvey, and relinquish unto the said Nye, his heirs, executors, administrators, or assigns, all right, title, or interest in or unto the aforesaid property, to wit, the horses, harness, carriages, buggy, wagon, cart, carriage-house, and stable and lot of ground, said Nye, in the meantime, to have the use of the
39 above-described property. And the said Nye obligates himself to keep all of the above-named property in good order and the horses in good working condition, and not to remove any of them, or any of the above-named property, out of this District, without the consent of the said Mattingly. But should the said Nye fail to make either of the above-named payments when due, the said Mattingly is hereby authorized to sell, on the best terms that can be obtained, enough of said property to meet said payment, and to apply the avails thereof to the liquidation of the same.

And to the faithful performance of the above obligation in all its parts the said J. W. Nye and the said George Mattingly, each to the other, binds himself, and by these presents doth bind himself, his heirs, executors, administrators, and assigns, firmly, jointly and severally, by these presents.

In testimony whereof, the said J. W. Nye and the said George

Mattingly have hereunto set their hands and seals, this first day of June, in the year eighteen hundred and forty-three.

[SEAL.] J. W. NYE.
[SEAL.] GEO. MATTINGLY.

DISTRICT OF COLUMBIA. *Washington County, to wit:*

40 On the first day of June, eighteen hundred and forty-three, personally appeared before me, the subscriber, a justice of the peace in and for said county, J. W. Nye and George Mattingly, and acknowledged the above to be their hands and seals, acts and deeds, for the purposes set forth in the foregoing instrument of writing.

Given under my hand and seal the day and year above written.

[SEAL.] HENRY HOWSER, *J. P.*

Know all men by these presents that I, J. W. Nye, of the city of Washington, and District of Columbia, for and in consideration of the sum of one hundred and fifty dollars, to me in hand paid by George Mattingly, of the city and District above named, the receipt whereof I do hereby acknowledge, have bargained, sold, and conveyed, and by these presents do bargain, sell and convey, unto the said George Mattingly one set of irons for a hackney coach, now in my possession, and also a good, neat, and substantial hackney coach, which I am to have made to the above set of irons by the first day of December next, to have and to hold unto him, the said George Mattingly, his heirs, executors, administrators, or assigns, the

41 above-named hackney coach and all the appurtenances thereto, I bind myself, my heirs, executors, administrators, and assigns, firmly by these presents.

The condition of the above obligation is such, that if the above-named J. W. Nye shall well and truly pay, or cause to be paid, unto William G. W. White a note of one hundred and fifty dollars, drawn this tenth day of June, eighteen hundred and forty-three, by George Mattingly, in favor of William G. W. White, on or before the day said note becomes due, which is one year from the date hereof, the obligation is to be void and of no effect; but should the said Nye fail to pay up said note in due season, then the said Mattingly is authorized and empowered to sell said hackney coach to pay said note; and should there be a balance left, after paying said note and all expenses of said sale, to pay said balance to J. W. Nye, or any person duly authorized to receive the same.

And the said Mattingly is furthermore authorized, should he prefer, that in case the said Nye should fail to pay said note, to sell any part of other property secured to him by a deed of trust executed to him by the said Nye the forepart of the present month, sufficient to meet the payment thereof.

42 And to the faithful performance of the above obligations the said J. W. Nye hereby binds himself, his heirs, executors, administrators, and assigns, firmly by these presents.

Given under my hand and seal this 14th day of June 1843

[SEAL.] J. W. NYE.

Signed, sealed, and delivered in the presence of—

HENRY HOWISON, *J. P.*

Endorsement: Received 28th June, 1843, to be recorded; and the same day was recorded in Liber. W. B. No. 101. folios 372, 373, 374, 375, and 376, one of the land records of Washington county, in the District of Columbia, and examined by W. Brent, cl'k.

Know all men of these presents that whereas I. J. W. Nye, of the city and county of Washington, in the District of Columbia, executed unto George Mattingly, of the city and county aforesaid, two certain deeds of trust, for the purposes therein named—the one bearing date on the first and the other on the fourteenth of June, eighteen hundred and forty-three, in Liber. W. B. No. 101;
43 and whereas I have since given the said Mattingly an assignment of a part of a certain claim I hold against the United States, in lieu of said deeds of trust, the said Mattingly holding the said property as collateral security, in case the said claim should not be obtained; and whereas the said Mattingly has granted an extension of time for the payment of the same until the first day of June, eighteen hundred and forty-six, I hereby, by these presents, sell, reconvey, and confirm to the said George Mattingly, his heirs or assigns. all the property specified in the aforesaid deeds of trust, with the exception of the two sorrel horses, John and Bill, and the colt Abdallah, which are hereby excluded.

The condition of the above presents is such, that should the said Mattingly, on or before the first day of June, eighteen hundred and forty-six, obtain the amount assigned him by me of said claim, then this obligation to be null and void, and the ownership of said property be reinstated in the hands of J. W. Nye, his heirs or assigns; but in case the amount assigned the said Mattingly of said claim shall not be then paid. the said Mattingly, his heirs or assigns, are hereby authorized and empowered to sell the aforesaid property agree-
44 ably to the terms prescribed in the aforesaid deeds of trust. the said J. W. Nye, his heirs or assigns, having the use of said property until the first day of June, eighteen hundred and forty-six.

And for the faithful performance of the above obligations, I bind myself. my heirs, executors, or assigns firmly by these presents unto the said George Mattingly, his heirs, executors, or assigns.

In witness hereof I have hereunto set my hand and seal, this fourteenth day of March, eighteen hundred and forty-six.

[SEAL.] J. W. NYE.

Signed, sealed, and delivered in presence of—

HENRY HOWISON.
JNO. W. WILLIAMS.

WASHINGTON, *November 2d*, 1853.

Received this day of George Mattingly one hundred dollars, for which I am to make him a good, handsome carryall, or two horse waggon, or carts, of as good quality and workmanship as can be made in this District, to be commenced on the first of December next, and

completed on or before the close of the first session of the ensuing Congress; said work to be made at the lowest cash price asked
45 for work of a like quality at any of the carriage-making establishments in this city. One hundred dollars, with interest from this date to the delivery of said work to him or his order, which I hereby obligate myself to do on or before the close of the first session of the ensuing Congress.

J. W. NYE.

WASHINGTON, *July* 18, 1860.

MR. MATTINGLY—SIR: I have been wanting to see you for some time, but have been confined to my bed most of the time, and have not been able to do so. When I got that claim of $3 200 through the House the Saturday before the adjournment of the first session of the 34 Congress, I raised $500 by giving $750 for the same whenever it should pass the Senate. The day the President signed the bill, the ensuing session, I got Mr. Wm. Dalton to take me in his hack, and the man who furnished me the money, and carry us to the Treasury, and counted out to him his money, which he put in his
46 pocket before myself or any other person received a dollar. My Avenue claim, which passed the Senate the Saturday before the adjournment of the past session, is in a better situation than that claim was, as this has received the unanimous sanction of House committee, and consequently there will be no delay by being referred to a committee. I am now under the necessity of raising $500 on the best terms I can; one hundred might be paid at any good grocery store. I want to know on what terms you will furnish that amount, on condition that I secure to you, not only the amount that you now furnish me and the premium thereon, but also all the old claims you have against me, to be paid out of this Avenue claim before any other person receives one dollar. Please write me an answer to this that I may receive it to-morrow morning, as I shall endeavor to make arrangement with some one this week.

Very respectfully, yours,

J. W. NYE.

47 Supreme Court of the District of Columia.

Claimant's depositions.

GEORGE MATTINGLY *vs.* NYE. } No. 150. Equity No. 7.

Benjamin B. French:

I acted as attorney for Mr. Nye in the prosecution of some claims against the government of the United States. I cannot state precisely the time I so acted, but it was, say some time between 1853 and 1860. I ceased to be attorney as soon as I entered upon the duties of clerk to the Committee on Claims of the House of Representatives, which was

on the first of July, either in 1859 or 1860; I really cannot now say which year. During that time I had conversations with Mr. Nye in reference to his indebtedness to Mr Mattingly, or Mr. Nye had with me. He spoke of his indebtedness to Mr. Mattingly; that Mr. Mattingly had loaned him money; that he was under great obligations to Mr. Mattingly for it; that he would pay Mr. Mattingly out of the first money he got. He expressed great gratitude to Mr. Mat-
48 tingly for the pains he had shown in aiding him. That seemed to be the amount of his conversations on that subject. Those conversations continued in that way from the time Mr. Mattingly lent him money onward. I don't know when Mr. Mattingly lent him the money. Mr. Nye always talked this way about his obligations to Mr. Mattingly and his determination to pay him, whenever he talked with me. Mr. Nye stated he was in a very distressed situation for money, and that Mr. Mattingly had aided him and had lent him money to live on.

After Mr. Nye had got his claim through Congress, Mr. Mattingly called on me and said Mr. Nye had utterly refused to pay him anything. I then sat down and wrote Mr. Nye a letter—a strong letter—urging him to pay Mr. Mattingly.

I made a written statement for Mr. Mattingly of my belief that Mr. Nye's claim would pass the next session, which it did, for the purpose of inducing Mr. Mattingly either to aid Mr. Nye or to keep him from pushing Mr. Nye, I do not now recollect which. This note that I wrote, I do not know whether I addressed to any one,
49 or that I wrote it to Mr. Mattingly, was as to the first claim. The note to Mr. Nye, urging him to pay M. Mattingly, was after the last claim was paid. I do not know what effect that note had on Mr. Nye. I have not seen him to speak to him since, until he came into this room just now. I think I do not know that he owed any other person. I never received a dollar from him for the services I rendered him in reference to his claims. He has promised me again and again that he would pay me whenever he got any of those claims through. I can't recall that I ever heard of his indebtedness to Mr. White or Kimmel & Walker. I could recollect of his mentioning any other than Mr. Mattingly. He mentioned Mr. Mattingly's name to me often. Mr. Nye's circumstances, during the pendency of those claims, according to his own representations, were very poor. I lent him five dollars once for him to buy marketing. He paid me back that amount. He professed to be very poor. I did not know anything about his having any property at that time.

Cross-ex.

Those conversations you had with me while I was acting as your agent in prosecuting those claims. I do not now recollect what claim it was that I wrote as likely to pass the next session. I can't
50 recall the times I had these conversations with you. I do not know whether I have papers at home showing when I acted as agent. I suppose I have some papers at home showing it. I gave Mr. Nye notice, when I was appointed clerk of the committee, that

I could not act as his agent any longer. I was not his agent when his second claim passed Congress. Mr. Nye had so many claims, that I cannot say [say] whether I was agent when he had his first claim. I was agent for Mr. Nye before I was first Commissioner of Public Buildings. On being appointed Commissioner of Public Buildings I gave up all claims; when I ceased to be commissioner I again prosecuted claims, but I cannot tell when I was Mr. Nye's agent. I wen out of office as commissioner the first time the first day of July, 1853, and from that time to July, 1859 or 1860, I was agent for prosecuting claims, but at what time I had Mr. Nye's claim I can't say. I am rather inclined to think [I am rather inclined to think] I was not his agent when Mr. Taylor was a member of the committee of the House. I remember the passage of the first claim, and that I was not Mr. Nye's agent then, from the fact that Mr. Nye was designated by one of the members, who urged the claim, as Peter
51 Bargy's ghost. I think, but I do not remember certainly, that I endorsed a note for Mr. Nye, and that he gave me some collateral security. The note, I believe was to Mr. Mattingly. I presume the note was paid. I heard nothing more of it. Mr. Nye may have afterwards brought the note to me to show that it was paid, though I do not remember.

Re-exam.

I am familiar with Mr. Nye's handwriting. This, looking at paper and marked Exhibit M, is signed in Mr. Nye's handwriting. In my judgment, from my knowledge of Mr. Nye's handwriting, this paper, marked N, is in Mr. Nye's handwriting, both the signature and the whole body of the paper. This paper, Exhibit O, is signed by Mr. Nye, but I cannot say positively about the body of the paper. I am not certain of the signatures to paper marked Exhibit A, filed with the bill. Both the signature and the body of the paper, marked Exhibit P, is, in my judgment, in the handwriting of Mr. Nye. Paper marked Exhibit B, filed with the bill, is in the handwriting of Mr. Nye, both the signature and the body of the paper. Taking
52 the whole of Exhibit A together, I should say it was in the handwriting of Mr. Nye, though I can't swear positively as to his signature thereto. The "Nye" in the lower signature looks like his, but the "J. W." is not his ordinary handwriting.

Jan'y 31, 1865. B. B. FRENCH.

Joseph A. Mattingly:

I know both the parties to this suit. I know Mr. Nye from going to see him on business for my uncle. I called three times for Mr. Mattingly on Mr. Nye to collect money. This was in 1862. I carried a note on one occasion from my uncle to Mr. Nye, asking for money. Mr. Nye was then doing some kind of work in yard, putting up fence or something, when I presented the note. Mr. Nye seemed a good deal worried; said his nephew had been injured down at Fortress Monroe. Did not want to read the note until I made him

read it. I said I could not return without some kind of answer. After reading it, he said he would call down and see Mr. Mattingly. I do not recollect what he said the other times, except once, he would come down. I remember one expression he used,
53 which was, "Yes, yes. I'll come down." He said, after he read the note, "After I return from Fortress Monroe, I'll come down." I understood from his remarks that he would come down and settle. He did not say, as I remember, that he would come down settle. Yes; he said on one occasion, "I'm too nervous now to make out his account, but when I make it out I'll come down and attend to it. I can't say he said settle.

Cross.

I knew the contents of the note I carried. I handed the note to Mr. Nye, and he said he would come down. I knew what the note was about. I did not read the note. My uncle told me what he was going to send me about. I do not know that I can say that I knew the contents of the note; I don't recollect reading the note.

J. A. MATTINGLY.

The further taking of depositions in this case was, at the request of complainant, postponed until to-morrow, Wednesday, February 1, 1865.

54 WEDNESDAY, *February* 1, 1865.

William G. W. White:

I know Mr. Nye, the defendant in this case. Mr. Nye was (objected to by defendant's counsel) indebted to me about 1857, in about the sum of $1,100 or $1,200. No part of that indebtedness has ever been paid by him. I do not know how much that indebtedness is now; I can't say. We made an arrangement by which he gave me an order on the treasury for $1,500 out of any claims he might have, in consideration of his debt and interest due me up to the time of the settlement, but the day of the settlement I cannot say. This debt was due to the firm of White & Brother, of which I was a member. I never received anything on that order. I presume Mr. Nye would have had no difficulty in finding me if he had wanted to pay me on that original debt. He has always, I think, known my whereabouts. I understood that Mr. Nye was very poor, indeed, about 1856 or 1857—very poor and needy—and down to 1862. I do not know of his indebtedness to other people, only as I heard from Mr. Mattingly. Yes, I recollect, I understood from Mr. Nye that he was indebted to Mr. Kimmel, but I do not know in
55 what amount. I do not know when I heard from Mr. Nye of his indebtedness to Mr. Kimmel. I heard of his indebtedness to Mr. Mattingly in 1845, and I think I heard of his indebtedness to Mr. Kimmel before that. I think I know the handwriting of Mr. Nye. Exhibit B looks a little different from what I have generally seen of Mr. Nye's handwriting; it looks like it. Both the

body and signature looks a little differently from what I have seen of his. If I was compelled to say either way, I would not say it was or was not his. If I was compelled to say either way, I would say it is his, but it looks a little different.

Cross.

The settlement first made with Mr. Nye was between 1833 and 1840. He paid neither up in full out of a claim. I can't say the exact time. I think I was correct in saying that it was between 1833 and 1840. It was paid out of his first claim—the Bargy claim—that he got passed. After he paid that claim of ours off, we lent him other money. He had paid us out of the Bargy claim, and in 1845 he gave us an order on the rest of the Bargy claim. I understood from him and Mr. Mattingly both, that he had given Mr. Mattingly a similar order on the Bargy claim. Mr. Mattingly brought his order to me to file in the Treasury, which I did. I gave Mr. Mattingly
56 a receipt for the order he left wtth me. That order in my favor was taken by me in full satisfaction of my claim on Mr. Nye. I understood from Mr. Mattingly that he had received from Mr. Nye the order in satisfaction of his claim. Mr. Nye afterwards wanted more money. I told him I would raise more money if he would give me an order on some one of his other claims. I had the claim on his Avenue or Bargy claim. I loaned him $63, and he gave me a bill of sale on his tools, &c.; also a new order for $1,500 in lieu of, and which cancelled his other order, on any of his claims which passed first. This transaction was after Mr. Nye was living at his house on the corner of 10th and O streets. He had his shop and tools there. I agreed to take this new order for $1,500 in satisfaction of what was due me, and he promised, when his claim passed, to come and pay me the money. The printed letter on page 14 of the pamphlet filed and marked Exhibit J. W. N., No. A, is the copy of the one we wrote. (Mr. Cox, for complainant, objects to this letter.) The order I took was in full transaction of all claims we had against him. It is always understood with business men, that when
57 a note or order is taken it is in satisfaction of original debt. Mr. Mattingly told me that he had had a settlement with Mr. Nye, and had taken an order on the claim. I am pretty certain Mr. Nye has not received anything further on the Bargy claim; but of the others I know not whether he has or not. I have never seen anything dishonest (Mr. Cox, for complainant, objects) about Mr. Nye. He has made promises which he has not complied with in some cases from inability.

I would not presume that the understanding was, that if the order was not paid the debt was extinguished. I had the claim on the Bargy claim. I had no claim on him until that was either passed or rejected. I took the next order, including the Bargy claim, on other claims.

In 1862 I had an order on any claim that might be passed. In 1862 some claims did pass, and I called on him, and he said he

wanted to go around and pay all his creditors something, and as soon as he would get his mind relieved he would come down and pay me something, which he did not do. He said he had lost money, &c.

W. G. W. WHITE.

58 Robert Beale:

I knew J. W. Nye in 1856 and 1857, and years before that. About 1856 and 1857 he told me that in consequence of not geting bills passed he was much pressed; that he had to take up little jobs of work to support his family. He borrowed $25 of me, and gave me his note, which he afterwards paid. He said his family were very much in want, and he had tried to borrow money of those to whom he had paid fees, but could not get it, and I loaned it to him, and he was to pay me out of a claim, which he did. He told me he was indebted to Mr. Mattingly and other persons; that he had borrowed money of them. This was before and after he got his last claim through. I know of his recovering a claim in 1862; I was up at the department when he got his money. I do not know what this claim was.

Cross-examination.

My brother-in-law received two hundred dollars from Mr. Harkness with whom Mr. Nye had left it after his claim passed for him. I think I gave my brother-in-law an order for the amount, and he received it as I have stated. This was for services, and was what Mr. Nye had agreed before to pay, [Mr. Nye had agreed before
59 to pay.] Mr. Nye had given me an order on his 1862 claim, and when that was passed I went to see Mr. Nye, and he said he could not pay it; that he had to put repairs on his house, and had other creditors whom he must pay, and among them named Mr. Mattingly.

ROBERT BEALE.

J. W. Nye, the defendant:

In 1862 I received, for improving a public lot of ground, some four thousand and, I think, four hundred dollars. It was three thousand instead of four thousand, and I received some fourteen hundred and odd dollars on the carryall contract.

In 1857 I drew from the Treasury Department three thousand two hundred dollars on the improvements of that public lot of ground.

Cross.

I had borrowed of a clerk in the department three hundred dollars, for which I gave him an order on that claim in 1857 for five hundred dollars. On the day in 1857—the 7th January, 1857—that
60 that money was drawn, I got Mr. Dalton to take me in his hack and carry me to the boarding-house of this clerk; took him in the hack and carried him to the treasury with me, and kept him there until I drew the money, and paid him $500 at the bank

where I drew the money. I then had Mr. Dalton to carry me round to every man that I could find that I had any knowledge I justly owed anything, and paid them. I was expecting to leave the city early the next morning, and there were three persons I owed that I could not see that day, and I left the money for them with Mr. Harkness. I left two hundred dollars for Col. Beale, the gentleman who has just testified; three hundred and fifty dollars for Col. McRea; two hundred for Francis A. Dickens. I then deposited a sum with Mr. Harkness to purchase a house and lot for my wife, over which I was to have no control; with this special understanding that if, before he had parted with it for the above purpose, I was to be in need and want the same, or any part of it, I could not have it, but it must be invested for my wife and I have no control over it.

61 There was one other man that I owed fifty dollars to for assisting me in my claims; I did not pay him, as I could not find him. I did not recollect his name, and did not leave the amount with Mr. Harkness for him on that account. After I came back I ascertained the man's name, and gave Mr. Dalton's $50 to pay to him, which he did, and took his receipt therefor. At that time I did not know of any other person that I had any knowledge that I justly owed one dollar, who had any just right to that claim. At the time I made these assignments to Mr. White and Mr. Mattingly, Mr. White offered that if I would give him two dollars for one on an assignment of that Bargy claim, he would take it in full settlement of his claim, on the condition that I would, on the passage of that claim, give him a legal right to draw the money.

(Mr. Cox, att'y for complainant, here objects to the———.)

Mr. Mattingly made me the same offer in regard to his; and I likewise gave him and them an assignment, which was a final settlement of their claims, only on the passage of the claim I was to give them legal authority to draw the money.

J. W. NYE.

62 Adjourned.

FRIDAY, *February 3d*, 1865.

Present, pursuant to adjournment.

George Mattingly, the complainant, was offered by W. S. Cox, esq., complainant's counsel, for examination. Being first by me duly sworn, doth depose and say, as follows:

1. Look at Exhibits M, N, D, P; state by whom they were signed and given to you; also paper marked Exhibit A.

Answer. By J. W. Nye.

2. State for what purpose they were given to you.

Answer. As security for money, &c., advanced to Mr. Nye.

3. State whether at the times they were received by you Mr. Nye was indebted to you, on what account, and in what amounts.

Answer. In 1843 I furnished Mr. Nye with money and lumber to the amount of $800, for which he gave me this paper marked Exhibit

M, two papers, the 1st and 14 June, 1843. That amount run on from that time until March, 1845. There was then another agreement made referring to that matter, marked Exhibit N. In 1845 a settlement took place, when this Exhibit N was made. It was made in
63 continuation of M. That was in March, 1845. In June, 1845, Mr. Nye gave me two drafts on the proper accounting officer of the Treasury of the United States. They are in the Treasury Department and can't be found; I went there to try and find them, but could not. I produce the chief clerk's letter, showing that search has been made and they can't be found.

(Answer referring to letter objected to.)

One of those drafts was for $1,200 and the other $255. My impressions are, though I am not positively certain, that one of those drafts on that claim was for the public ground, though it might have been on the carryall claim; my memory does not positively serve me, and that is the reason why I was so anxious to get the draft. The lumber and money furnished Mr. Nye, as appears in Exhibit M, was expressly for the purpose of improving that ground (public ground) and building stable, fence, &c., for which he was to pay me $15 a month for the rent of the stable, one mill of which he never did pay. This account run on from June, 1843, to June, 1845, and the accumulation of rent according to the agreement M made up those two amounts of $1,455 altogether. The thing went on from that time without any payment being made, until November, 1853, when
64 Mr. Nye called on me and proposed to give me the two orders on paper, marked Exhibit A, in place of the other two drafts, one for $1,250 and one for $200, being the same amount for the two former drafts, without a cent of interest being added for the eight years and four months. Those drafts were drawn upon John M. McCalla, agent for Mr. Nye. I see I have made an error The first draft $1,450 instead of $1,250, and was for the two first drafts. On the same day, November 2, 1853, I advanced Mr. Nye a further sum of money—the amount I do not exactly recollect—when said Nye executed Exhibit O. On December 26, 1854, McCalla paid me $25 on one of the orders in Exhibit A. Mr. Nye always, from the incipiency of this first claim in 1843, promised most faithfully that he would pay me out of the very first money he received from the government, it mattered not whether I had claims on that fund or not, that I should be paid out of the first money he got. This pamphlet, which has, amongst other letters, a letter of mine, purporting to be a certificate dated January 5, 1857, was, if it was intended for the use here attempted to be made, obtained under fraud. This letter was brought to me, written out ready for my signature, and, I
65 believe, in the handwriting of Mr. Nye. The letter will speak for itself. It can be obtained; it is in the Treasury Department. I think I saw it there the day I was looking for those orders. I at first hesitated to sign it. Mr. Nye stated that it was a mere matter for the committee; that it had been represented to the committee that if the bills were passed for his benefit he would get no benefit from them; that he owed it all, or had transfer-

red all his claims, and that he only wanted it to counteract that statement of the committee and that it would make no difference, I should be paid my claim out of the very first money he got from the government, and I never intended to release any claim or indebtedness whatever until I got the money. Upon that certificate, and others in that pamphlet, he got from the government some time in January following—17 January, 1857—the sum of $3,200, out of which he never paid me one cent, although I repeatedly called on him to do so. In July 1860—18 July, 1860—he wrote me this letter, marked exhibit P, asking for a further advance of money and promising to secure me in all the old indebtedness; on the 21 July. 1860, I advanced him a further sum of money, and took paper exhibit B,
66 which included all, except the interest, They were carried on from one to another. Paper B included the then present advance as well as all former indebtedness. This assignment (paper B) was to be paid out of either of these claims Nye had against the government, and did not include the interest on the old indebtedness which would have amounted at that time to $1,000 or $1,200. This assignment was made and drawn on the proper accounting officer of the treasurer, and a stipulation thrown in, which Mr. Nye binds himself, his heirs, executors and administrators, that as the law of Congress prohibited the giving an assignment, before the claim was past, that he would then make a new assignment after the claim was passed. In 1862 Mr. Nye got a further sum from government on his claim on which said assignment was made of $4,887 28, out of which he never paid me one dollar, or offered to give the assignment which he had bound himself there to do, although I sent my nephew to see him several times and called on him myself repeatedly, immediately after he got the money, alleging as an excuse for his not doing so, that he was sick and laboring under a nervous debil-
67 ity; that his head was in such a state that he could not make up the accounts, could not make up the amount that was due me, but would do so in a few days and come down and settle with me. This promise he made repeatedly until the last interview I had with him over opposite the City Hall here, when I pressed him pretty hard for a fulfilment of his engagements; he got pretty warm and told me I might get it as I could. I then determined to bring this suit and did so. I desire to state something brought out by Mr. Nye's testimony yesterday.

The further examination of George Mattingly and other witnesses were hereupon, by consent, postponed until further notice.

TUESDAY, *February* 21, 1865.

Met pursuant to consent and notice.

Mr. George Mattingly continued his answer to the third question.

In answer to that part of Mr. Nye's testimony relating to his giving of an assignment of two dollars for one, so far from his giving that he never gave what was due with the interest by several hundred dollars, as will appear from exhibit N. The debt in 1843 was $800, and from said paper he was to pay a rent of $15 a month

68 which would amount itself up to 1853 to $1,800. The rent would at the time the order was given for $1,450. No interest ever being all owed on the claim, or any interest calculated thereon from 1843 to the present time. In 1853 two orders were given on the department, one for $1,450 and one for two hundred dollars, at which time I advanced Nye $100 for which he gave me an order for $200, the $100 being a part consideration of interest. The regular interest on the debt and the rent that was to be paid for the stable would amount if it was allowed to a much larger sum than the whole debt claimed of Nye at this time.

Cross-examination.

The account of $800 furnished in 1843 to Mr. Nye was for money and lumber both furnished him. I think I did make further advances between 1843 and 1845 though I do not recollect it from the fact of his giving me credit in his printed statement for $160, which does not appear in my claim. Nye had a lease on this lot of public ground. The stable, after it was built, would have been Nye's, but he transferred the lease he had on it to me. That lease was never transferred back to Nye. The
69 lease was transferred to me at collateral security for the money and lumber advanced. It was the intention that the $15 a month for rent was in lieu of interest. There was nothing said about interest at the time. The $1,250 order given in 1845 was for this order in 1843, and the $200 must have been for other advances. I must have advanced him other money. I was lending him sums of which I took no account. I have no definite recollection of advancing him between 1843 and 1845 any certain sum of money, but I know I did advance. I never, as I am aware of, ever calculated any interest on that $800 advanced in 1843, or counted in. From 1845 to 1853 I think I advanced Mr. Nye some money, I cannot tell the amount. In the settlement in 1853 I have no recollection of any interest being calculated or counted in. We had no more settlements at that time, (1853,) only the calculation of what had been received, and his giving the orders and the promise he made that the interest would be paid when he got his money. At that time, 1853, those two orders included the whole indebtedness, except the interest, which was to be an after consideration. The $200 was given
70 for the $100 advanced by me in consideration of advantages, benefits, and favors I had done him. The $100 was regarded by me as all I could get, but not by any means covering the whole amount of interest. That $100 excess did not apply exclusively to the advance of $100, and did not apply to the previous transactions any further than I have already stated. Exactly as I have related before, he gave me the $200 in consideration of previous transactions with the $100 advanced. There were two orders given in that settlement, because one was given on one transaction and the other on the other. The orders speak for themselves. I do not know why all the claims were included in the $1,250 and all the

advantages were included in the $200. You will have to ask Mr. Nye that. I had to take what I could get from him. I do not know why these orders were given on these claims. The consideration in Exhibit O was never complied with. At the time I signed that letter printed in the pamphlet Mr. Nye owed me money. I signed the letter containing those statements for the reason explained in my former testimony. We had in 1860, [we had] such a settlement as we always had. He obtained further advances—one of $400, one
71 of $100, and some smaller amounts at different times, which I do not recollect. I recollect once of advancing him money with which to go down and see John Tyler on James river, and there might have been a number of others which I do not recollect, and I have no doubt there were others. At the time Mr. Nye gave me Exhibit B, filed with the bill that included all the previous amounts, orders, and advances up to that time, except the interest, this was taken in lieu of the former orders. Out of all the moneys advanced him, and orders taken, I never received but $25.

GEO. MATTINGLY.

73 Supreme Court of the District of Columbia.

Deposition of witnesses on the part of the above-named defendant before me, William R. Woodward.

GEORGE MATTINGLY *vs.* J. W. NYE. } No. 150. Equity No. 7.

Zadoc W. McKnew:

I know the defendant in this case. I was attorney for him to prosecute certain claims which he had pending before Congress. It was in the year 1858–1859. This paper marked Exhibit H, Nos. 1 and 2, filed in this cause, and now shown me, was, to the best of my knowledge, compiled by me and presented to the Senate committee of the District of Columbia. I compiled it from documents procured—evidence furnished me. I think it was furnished at Nye's request and my own. A portion of it, I know, was procured by me, without the suggestion or assistance of Mr. Nye. I cannot tell whether I made a personal application for this testimony, namely, a letter dated January 5, 1857, from George Mattingly to Z. W. McKnew,
74 but I know it was furnished me. I cannot answer distinctly that I requested this letter from Mr. Mattingly, or was furnished me at Mr. Nye's request. I may have written a note to Mr. Mattingly requesting it. I do not think I made any personal application to Mr. Mattingly for the testimony. Mr Nye may have written to him, and this letter was then addressed to me. I have no recollection of making personal application to either Mr. Mattingly, or Mr. Linergait, or Mr. Rock. I did not Mr. Rock at the time. Mr. Mattingly lived down on the island, and I did not go there to see him. I can't swear positively that this letter of Mr. Mattingly

is an exact copy of the original letter. It looks like a true copy, but without comparing it with the original I cannot swear that it is an exact copy. Mr. Nye had one claim before Congress that was called the Avenue claim, in which he was the assignee of Peter Bargy, I think his name was. The other claim he had was against the House of Representatives for services rendered the post-office of the House. He had some horses lost, and he claimed for them and his own services rendered, &c. The claim upon
75 which this letter of Mr. Mattingly was filed was for a public reservation now used as a botanical garden between Pennsylvania avenue and Third streets, through which reservation Tiber creek runs. He claimed for filling up the Tiber creek. This claim for the improvement of this reservation—public ground—must have been passed sometime in 1859, during the long session; the date of passage is accessible from the public records. During the passage of this claim I was generally known as the agent of Mr. Nye in procuring its passage. I was frequently spoken to by persons during its pendency about the claim. I was spoken to by persons as regards the probability of Nye paying them out of this claim. Mr. Mattingly never called on me in relation to it, or make any claim. I don't remember ever having had any conversation with Mr. Mattingly relating to this claim, or Mr. Nye's indebtedness to him; if I ever had I have forgotten it. I do not know of my own knowledge, only from what he said of Mr. Nye's trying to pay his creditors. I know he took some pains to pay me. I have known Mr. Nye for a long time. In all his intercourse with me I have always found him
76 honest and correct in all his dealings, and I never knew anything to the contrary of him. (Mr. W. S. Cox objects to the last above.) I never had any other dealings with him, other than as regards this claim of his.

Cross.

I do not remember in whose hand-writing the original of Mr. Mattingly's letter, as printed, was. I received the letter as testimony of Mr. Mattingly. I had no personal knowledge that it was written by Mr. Mattingly. I did not know Mr. Mattingly's handwriting. I think it was as far back as 1858—1857 or 1858—that I became Mr. Nye's attorney. He had had various attorneys or agents before that. I do not remember that one of the difficulties I had to contend against before the committees, was that Mr. Nye was embarrassed and had assigned this claim to others. I do not think that this was the case in this claim. I had more difficulties with his other claims than with this. I was his attorney in all his claims. There was some prejudice against his claim as assignee in the Bargy claim; that he had parted with his interest, but not in this claim. I do not
77 remember that Mr. Nye ever stated to me that representations had been made to the committee that he had raised money on or parted with the claim with a view to prejudice the claim before the committee. I confine myself mostly to this claim. I do not

recollect—I can't remember that I ever advised Nye that it was important for him to get evidence that he had not parted with his interest. There was something of the kind in the Bargy claim; not as to this claim. I did not advise him to get Mr. Mattingly's letter with any such view; but I advised him to get all the evidence he could for different claims.

Z. W. McKNEW.

78 FRIDAY, *March 24th*, 1865.

Richard I. Ryon:

I know Mr. J. W. Nye very well. He was indebted to me two different times in two bills, and on receiving his money from the Treasury he came down very promptly—down to my store two different time and paid me. He paid me out of funds he received from the government for the improvement of public grounds. It was some years ago. I can't tell exactly the time, but I presume it was about 1856. I have no right to think otherwise than that he is a man of honesty and integrity. I have no doubt that he will always pay as he is able. Mr. Dalton brought Mr. Nye down from the Treasury Department in his hack to my store each time to pay me.

R'D J. RYON.

Paulus Thyson:

79 I know J. W. Nye very well. The letter purporting to be signed by me on page 15, 16 of the printed pamphlet annexed and marked Exhibit J. W. N., No. 1, was signed by me after being carefully read by me. I am not certain but that I wrote the letter. I should freely sign the letter again were it presented to me for signature. I believed when I signed the letter, and still believe the matters stated in that letter to be true as stated. A very short time, and it may have been the same day, that he received his money from the department, he came in a hack to my store and paid me. He got the money from the department on claim he got from the government, as he said at the time, for improving some government ground. Sometime after the war commenced, I think it was in 1862, Mr. Nye called again and paid me some money he owed me. This was paid out of a claim passed by the government in his favor.

P. THYSON.

Adjourned to Wednesday, March 29, 1865, at 10 o'clock, a. m.

WEDNESDAY, *March* 29, 1865.

80 John M. McCalla.

I have known Mr. Nye for at least fifteen years; as far back as 1850, I know perhaps for 16 years. I was employed by him to prosecute claims before Congress. There were two or three claims. One was the Bargy claim for paving the avenue, another was about a lot on which Mr. Nye erected a stable, now occupied as a public

garden. The third was against the House of Representatives, for carrying documents about the city in his caryalls. Those were all. I think the last two claims were passed; the other is still before Congress. I think Mr. Mattingly called on me when it was probable all the claims would passed, and I think he presented me with perhaps an order from Mr. Nye, producing this order as an evidence that he was a creditor of Mr. Nye, and was entitled to receive part of the proceeds. I do not recollect exactly when this was. The claims were for a long time pending upon the small claim for the carryall. There was so small an amount allowed as only to pay the fee due me and twenty-five dollars over, which was paid to Mr. Mattingly. I
81 was directed, out of the money allowed on this claim, to divide all over such a sum among such of those as should produce Mr. Nye's orders. There was only twenty-five dollars more than sufficient to pay my fee allowed, and I paid that to Mr. Mattingly. I am still acting as Mr. Nye's attorney or agent in the Bargy claim. There has been no interruption of my employment as his attorney. I was his agent when the claim for the improvement of the lot was passed. I went with him to draw that money. I received my fee.

(Mr. Beale for complainant excepts.)

Mr. Nye and I conversed several times before and after the money was drawn.

(Mr. Beale excepts to Nye's declaration.)

In regard to those he intended to pay the money to, with which, however, I had no business, as I was only his agent to get the money. I did not see Mr. French the day we got the money, but I saw him afterwards; how soon I do not know; may have been some weeks after. Major French had written a letter to Mr. Nye, as I was informed by him.

(Mr. Beale excepts.)

Mr. Nye requested me to say to Major French that he was sure he misunderstood him (Nye) if he supposed that he (Nye) had expressed himself friendly to Mattingly. I was requested also to give Mr.
82 Nye's apology to Major French for not calling to see him, or answering his letter, that he, Nye, would call and see him, (Major French) and that it was his intention to pay Major French for his services as agent; that he would pay him as soon as he could. Mr. Nye was then certainly laboring under great mental excitement. That was exhibited by him up at the treasury when he got the money, and afterwards too. I have seen Mr. Nye so several times about that period, and afterwards too. I had not seen it before. There was certainly a change in his health at that time. I should certainly hardly have considered him about that time of attending to his business, certainly not on the day he received the money, without the aid of a friend. I have had an opportunity of judging of Mr. Nye in relation to my own dealings with him, and I certainly considered him an honorable and honest man, and a liberal one too. He was remarkable for his complying with his contracts.

(Objected to by Mr. Beale.)

I consider his veracity as covered in the above remark, for no man could be honorable without being truthful. That was his character with me. I have frequently conversed with Mr. Nye in rela-
83 tion to Mattingly's claims against him. He said the claims of Mr. Mattingly were enormously high, being made up of enormously usurious interest upon comparatively small advances. He charged Mr. Mattingly with having taken advantage of him in regard to some obligation he had given him, but that it was his intention to pay him what he considered justly his due. I think that is about the substance. I had frequent conversations with him. The conversation occurred before and after the orders were given. At the time the money was drawn from the treasury, as before stated, Mr. Nye's conduct (when he received that money in the cashier's public room, surrounded by a good many persons) was such in exposing his money &c., as to cause me to take the money and take him into a private room, and I thought he ought to have some one to take care of, or go with him. Mr. Dalton took him in his hack. Such was Mr. Nye's agaitation when at the restaurant to which we had gone, after getting the money, that he was unable to raise the glass to his mouth, even with both hands, without spilling its contents, and consequently drank what he did from the glass while on the table, leaning
84 down to drink it. Mr. Dalton then carried him off in his hack with the promise to take care of him.

(The above was objected to by Mr. Beale.)

Cross-examination.

I think it was $525 that was paid on the carryall claim. It was far below the amount of the claim. My fee was to be $500. I know of no other money or means possessed by Mr. Nye other than what he obtained from Congress, except what he got by his work, all kinds of work. He did a good deal of work, was a very hard working man. He had no money, as I know, invested, which produced him any income.

JNO. M. McCALLA.

Jonas W. Nye, the defendant, heretofore, on February 1, 1865, seen, being now produced by his counsel, states:

In June, 1843, (at the request of Mr. Beale, it is noted that Mr. Nye reads from a statement written in lead pencil,) and Mr. Beale suggests and consents that the statement be taken by the commission and copied by him as if given orally by Mr. Nye, Mr. Beale reserving all exceptions as if in oral testimonies.

85 In June, 1843, Mr. George Mattingly agreed to furnish me lumber to build me a stable and carriage house, on a lot of public ground leased to me by the President of the United States, and lumber to enclose said lot; and to furnish me $300 in money—the money to be paid in instalments of $50 per month, and to allow me two years to pay him back the money and for the lumber, on condition of my paying him $15 per month for the use of the $300

in money, and a sufficient price put on the lumber to cover the interest. To secure the payment thereof I gave him a mortgage of the lease of this public ground, and other property; and in drawing the mortgage, (for a blind,) this $15 per month for the use of the $300 was put down $15 per month for the use of the stable. This $15, or 5 per cent. per month for the use of the $300, I paid regularly and punctually until March, 1845. At the commencement of the 28th Congress, (Dec. 1843,) being offered the contract for furnishing horses and carryalls for the use of the House of Rep's, Messrs. Walker & Kimmell offered to furnish me all the stock I might require for the fulfilment of said contract, and to take a bill of sale of said stock as security. Mr. Mattingly was very urgent for me to let him
86 furnish the property on the same terms offered by Walker & Kimmell, but I much preferred dealing with Walker & Kimmell, and purchased the property from them. For several weeks Mattingly was importuning me to give my consent to allow Walker & Kimmell to transfer their contract and bill of sale of this property to him, to which I at last reluctantly consented, in hopes, if I should not be able to fully meet my other engagements with him at the time, he would more willingly give me further indulgence. After this transfer Mattingly drew the money from the House for their services, with the promise to furnish me money to purchase their feed, which he did not do. At the close of that Congress I had a just claim against the House of Rep's, growing out of this "carryall contract" which has since been reported unanimously in my favor by standing committees of the Senate and House, of $5,568 44, of which, at that time, through the influence of the postmaster of the House, I could not obtain one cent. Mattingly refused to give me any indulgence whatever, and had the whole of that property sold under the hammer at a mere nominal price, there being only
87 one man to bid on it, which completely broke up my business. Could I have gotten him, (as I fully believe Walker & Kimmell would have done, had it remained in their hands,) to have granted me an indulgence of three months I could have paid all of my debts without the sacrifice of any of my property. And from that day to this I have considered it one of the most unfortunate acts of my whole life in ever having anything to do with George Mattingly. For four months during the recess between the two sessions of that Cong's, Mattingly had the use of one of my horses and carryalls for his son-in-law to peddle tinware, for which he refused to allow me one cent for their services. Among the property I mortgaged to Mattingly to secure the payment for the money and lumber furnished me in building my carriage house and stable were two sorrell horses, (Bill and John,) and a colt called Abdallah, out of a blooded mare, (18 hands high,) of great speed, said to be sired by the celebrated Eclipse, of New York. This colt was one of the best colts I ever saw, and it was said by good judges of horses that he would make a horse worth $1,000; and when he was three
88 years old I would not willingly have parted with him for that sum. And in March, 1845, I paid Mattingly enough to clear

him and the two sorrel horses from the bill of sale, and gave him a new bill of sale, including all in the old bill of sale, except this colt then 3 years old) and the two sorrell horses. At the time Mattingly released this colt, so that he had no claim on, or interest in, said colt, the colt was, and had been for some time, on a farm in Prince George's county, Md., and Mattingly, without my consent or knowledge, went down and took the colt away and put him on a farm beyond the Eastern Branch, and had him castrated; and when I learned where he was I went over to see him and to take him home, but he appeared so entirely ruined that I had no wish to have anything to do with him; and from that day, in all my transactions with Mattingly, I have determined, in our final settlement, to get what I considered the full value of the colt, but have not to this day been allowed one cent. During the 28th Congress a select committee was raised by a unanimous vote of the House to make a final settlement of my Avenue or "Bargy claim," which committee
89 unanimously reported a bill in my favor; and in June, 1845, Mattingly offered to take an order on the Treasury Dep't, to be paid out of this Avenue claim whenever it should pass Congress, and payable at the treasury, provided I would give him the order on the claim of twice my indebtedness to him, and to receive it in full satisfaction of all I owed him, with the exception of the order I had given him on the "carryall claim," and to have no further claim on me for any of this indebtedness, except after the passage of the act by Congress I bound myself to give him a legal power to draw the money. I complied with his offer and gave him the order on the treasury for double my indebtedness to him, and bound myself that I would, immediately after the passage of the act, give him legal power aud authority to draw the money, but from that day to this the bill has not passed Congress, though it has been reported unanimously in my favor in every Congress except the one just expired, during which it has not been acted on by any committee. At the time I gave Mattingly, in 1845, an order on the Avenue claim, and one on the carryall claim, in full satisfaction of all claims he had against me, I had no claim against the government whatever
90 for improving this lot of public ground. Had I not been unjustly deprived of the use of this lot before the expiration of my lease, I should have had no claim against the government for said improvements; and I was not deprived thereof until 1848. The first I ever brought forward any such claim was in June 1856. In that month the official members of the Methodist Episcopal Church, McKendree station) had three special meetings to consult on the best means of assisting me to get a just and final settlement of my claims against the government, the avenue claim, the carryall claim, and a claim for improving this lot of public ground. One of their number, Mr. James N. Davis, drew up a memorial, asking of Congress a careful examination of these several claims, and the payment of what should be found justly due. This memorial was signed by Rev. John C. Smith, Rev. Mr. Hildt, Rev. Mr. Tustin, Rev. Mr. Gurley, and five other ministers of the gospel in this city; by

the mayor, President, and aldermen, members of the ccmmon council, district attorney, and 138 of the most respectable citizens of Washington, and was, on the 25th of June, 1856, presented in the House by Hon. Mr. Trafton, of Mass, and referred
91 to the committee for the Dist. of Columbia, and on the 19 of the ensuing month, (July,) Mr. Trafton, from that com'ee, by the unanimous sanction of said com'ee, reported a joint resolution (No. 23) in my favour, for improving this lot of public ground, for $3,200, and the last evening before the close of the session, it passed the House without one solitary objection, but was not acted on by the Senate for want of time. At the ensuing session it was, in the Senate, referred to the com'ee for the District of Columbia, and when taken up in that com'ee I was sick with typhod fever, and Mr. McKnew was attending to it for me. One of the com'ee informed Mr. McKnew that he would willingly allow all that said improvements were worth at a fair estimate, if such an estimation could be made. Mr. McKnew got Mr. Worth, a sworn measurer, to measure and estimate said improvements. He wrote a note to Mr. Mattingly, requesting a statement of all he knew in regard to said improvements, to be laid before the Senate com'ee, as evidence in this case, and I carried him the letter; and after consulting together, Mattingly directed me to call the next day, and he would send Mr. McKnew the information requested. I called on him the
92 next day, and without a solitary objection on his part, he gave me a written statement, of which the printed statement in pamphlet, headed "lease of a lot of public ground," pp. 6 and 7, is a true and exact copy, and addressed to Z. W. McKnew, esq., dated Jan'y 5, 1857. I never made the statement to him that I wanted it in consequence of objections raised against it, on the ground of being assigned away it would not benefit me, for I had not then, nor have I ever since heard of any objection being raised against it on that score; neither had I assigned one cent of that claim to any human being; neither did I ever promise or expect to pay Mattingly one cent out of that claim, as all my indebtedness to him was secured to him on the avenue and carryall claim. This claim passed the Senate without a solitary objection, on the 16 of Jan. 1857, and the following day, (17,) only 12 days after the date of Mattingly's letter, I drew the money from treasury and got Mr. Wm. Dalton to carry me around to pay all my honest debts, and paid every one I could find that I knew had any just claim against me; three men I could not find that day, and as I expected to leave the city next morning to go to my family in western New York, to be gone two or
93 three weeks, I left the money for them with Mr. John C. Harkness—for Col. McCrae, $350, for Col. Bealle, $200, and $200 for Mr. F. A. Dickens, and the balance of said claim with Mr. Harkness to purchase a house and lot for my wife, over which I could have no control. Mr. Mattingly never called on me before I went away, or after I came back, for any part of that claim, or ever asked me for any part thereof.

In the prosecution of these claims I employed two agents to assist me before Congress, Mr. McKnew and Col. McCrae, promising each of them $500 on the passage of the three claims, or a proportional share on the passage of either; and although this one was not 1-7 part of the three, I paid them $250 each. A short time before the close of the session, I employed Col. Bealle to assist me, promising to give him $400 if we got the three claims that session, but when I got only this small one passed at the ensuing session, I paid him $200, one half the amount he was to receive for three claims. During this Congress my mind was so intensely occupied with, and confined so exclusively to, the settlement of these claims, that I became so nervous that I could not close my eyes in sleep for several days and nights at a time, until my nervous system got so com-
94 pletely broken down as to render me utterly incompetent to properly transact business, or to understand, at the time, the nature of the business then transacted; and in this investigation, I have seen some papers which look like my handwriting, of which I have not the slightest knowledge of ever signing or ever having before seen or heard of. One in particular—to make a carriage for Mattingly, having the irons then on hand—I have not the slightest knowledge. The contract to make a carryall for Mattingly I certainly made on condition of Mattingly's furnishing me $100. He gave me an order on Mr. R. J. Ryan for $60 in groceries, and an order on any lumber-merchant for lumber to make the carryall, and the balance of the $100 in cash; but I could find no lumber merchant who would let me have the lumber on Mattingly's credit; could I have obtained the lumber I should have made the carryall, and I think it was for this indebtedness I gave him the order on the carryall claim. When I got the $3,200 through the House, the first session 34th Congress, I was utterly incompetent to transact business. Wanting to carry my family to visit our relations in western N. Y., I gave one man
95 an assignment of $500 of this claim for $300, another, $300 for $150, and another $100 for $40, when by waiting three months I was sure of having the money without any sacrifice—thus giving $410 for the use of $490 for three months, and when the money was drawn they were all paid the full amount. When I got the avenue claim through the Senate in 1860, I was less competent to transact business correctly than I was when I got the one through the House in 1856. I then wanted to raise $500 on that claim, and wrote a note to Mattingly to know on what terms he would let me have it, at the same time presenting him a note from B. B. French, esq., that this avenue claim had passed the Senate, and had received the unanimous sanction of the House com'ee, and that he thought there was no danger of its not passing the House early the ensuing session. Mr. Mattingly informed me on what terms he would furnish the desired amount. I told Mr. Jonathan T. Walker the terms Mattingly offered, and he told me to do no such thing, and advised me to have no more dealings with Mattingly, and he offered to furnish me what I might need for simple interest; but as I had made the proposition to Mattingly I thought I would take part from

him, and received $100 cash and an order on Geo. Parker & Co. for $100 in groceries, and this is all I ever received from Mattingly on the recommendation of Esq. French. Previous to this, I was in a great strait to raise $100. Mattingly offered me, if I would fetch him my note for $112, payable in 60 days, endorsed by Esq'r French, he would give me for said note $100. I carried him the note $112, payable in 60 days, endorsed by Esq'r French, and all that he would let me have for this note of $112 was $78, which I was simple enough to take, and I paid him the note, $112, at maturity, thus giving him $34 for the use of $78, 60 days. When I wrote to Mattingly in 1860, to know on what terms he would let me have $500 on my avenue claim, I did not mention either of the other two claims, neither of which had been acted on during that session, and if in that transaction, I did give him an order on either of these two claims, it was when I was under that nervous excitement that I had no realizing knowledge of what I was about, and when I got that small claim through, in 1862, I was less competent to transact business than I had been at any previous time. And when Mattingly called on me and presented the paper, it was the first intimation I ever had that it was given on anything but the avenue claim. I thought the paper resembled my handwriting but was not certain. I informed Mattingly that my mind was in such a condition that I could not add up a sum in simple addition, and begged of him to give one week to get my mind composed and tranquil, and that I would pay him every cent he was justly entitled to receive from that claim, which he refused to do, and he haunted me every day, personally or by proxy, (which greatly increased my nervousness,) until I refused, if he would not give me time for my mind to get tranquil, to have nothing more to do with him. One day his nephew brought me a letter signed by B. B. French. On commencing its reading, I found that the first paragraph was utterly untrue in point of fact, and refused to read any further, or to retain the letter, and returned it to the young man who brought it. The next day, the same young man brought me another letter (or the same) from Major French. I read this letter through, and it greatly increased my nervous disability, for I had always entertained for Major French the kindest feelings and the highest respect, and greatly desired to prevent any unkind feelings between us. I called on Gen'l McCalla, a mutual friend of us both, to get him to call on Mr. French and apologize to him for me for returning his first letter without reading. In this last letter Major French said I always called Mattingly my friend. I told Gen'l McCalla that I had never called Mattingly my friend; that I would sooner call the devil my friend, for from no being in human form, except John M. Johnson, had I ever suffered as much as I had through Mattingly. In regard to Major French's agency, I never got any claim through Congress while he acted as my agent. When I got my first claim through Congress for improving this lot of public ground, he had never been my agent, and when I afterwards employed him, I think he well and truly served me, and rendered me essential service, and when he took a

situation that precluded him from acting as agent, I told him, and likewise told Gen'l McCalla, that when the claims should be obtained, I would pay him the amount stipulated in each claim the same as tho' he had continued an active agent, and the only reason he was not paid at that time was the nervous excitement his letter put me in, fearing if I called on him before I got my mind composed, being so excitable I might say what I should ever after regret; but determined, as soon as I thought it safe for me to see him, to call and pay him fully as I
99 considered him justly and honorably entitled to it, but before I considered it safe to call on him my money was all gone. At one time (on Saturday evening) I left my pocket book on a stand in N. L. market with some $295 in it; the next Tuesday I left my pocket-book with several hundred dollars in it on the counter in Mr. R. J. Ryan's grocery store, which they took care of and returned to me. Shortly after my pocket-book and all my money was gone, and I never could remember where I had used it or what I had done with it; and I have never been able, since my mind has become tranquil, to ascertain what has become of only a little more than one-half of the money I received on that claim. One other gentleman I considered honorably entitled to receive a present of $100 or $200, which I informed Gen'l McCalla I should pay him, and the am't due Major French as soon as I was in a situation to call on them. Major French is certainly under a mistake in stating that I ever expressed to him any gratitude to Mattingly for any kindness ever received from him, unless it was when I was under that state of mind as not to realize what I said or did. For unless lending money on ample security at 5 per cent. per month is a kind act requiring gratitude, I never received but one pecuniary favor from him, and that was when
100 I wanted to go to Charles City below Richmond, Va., to see President Tyler, he gave me a free passage to Aquia Creek on the mail boat of which he was agent; but he let me have no money, as stated by him; the money to go with I borrowed of Mr. James N. Davis.

In regard to Col. Bealles' agency in my claims I was to pay him $400 for his assistance in the three claims. I paid him $200 out of that small claim of $3,200, which I considered, extremely liberal, and when I obtained that other small claim, I should have paid him one-half of the remaining $200 had I not been informed that he said, that if I did not pay him the whole am't he was to receive for his assistance in the three claims, he would defeat my avenue claim. I then determined to pay him no more, until the avenue claim should be passed. As my character in this investigation for honesty is very seriously assailed, I present the following testimony in self vindication, every statement of which I believe to be strictly true, and the signers were all men of the first respectability, and each therein named signed the original paper with his own hand; all of which is in a memorial presented in the House, June 25, 1856, and ordered by the House to be printed.

101 Cyrus Grant, J. Robe, C. Barr, W. Seaver, J. S. Billing, W. C. Raymond, E. Southworth, J. Lamberton, Thomas T.

Everett, and H. Putnam, on pages 9, 10 and 11 of said pamphlet; Martin Grover, S. R. Waters, C. A. Davis, James Davis, James Hoban, C. L. Coltman, William Bird, White & Brother, John C. Harkness, P. Thyon, and James Towles, on pages 11, 12, 13, 14, 15 and 16 same printed pamphlet. In answer to the statements of witnesses in regard to my extreme poverty, I hereby present House report No. 407, 1st session, 36th Congress, every word of which I believe to be strictly true.

When Mattingly commenced this suit against me in the Circuit Court I had no thought or intention of letting him get a judgment against me by default, or in any other way, having no fear of his being able to do so. I called on Mr. Bradley, sr., to know if he was engaged for Mattingly; if not, I wanted to engage him; he said he had no recollection of being engaged for Mattingly, and if not, he would willingly take up for me, and to call on him in a week or ten days, and he would let me know.

I informed him if he took up for me, I would give him a retaining fee of $50, and if decided in my favor, of which I had no fear, I would give an additional fee of $50, but before the time ap-
102 pointed for the interview I was confined by a long and severe illness, but as soon as I could ride out, I called to see Mr. Bradley, but he was not in the city. His son went with me to the court-house to ascertain the situation of the case, and found that judgment had been rendered against me by default. Mr. Bradley thought we might get it reinstated in court, and to call on the return of his father, and they would see what could be done, but a relapse and long continued illness prevented any further action on my part.

J. W. NYE.

104 In the Supreme Court of the Dist. of Col.

Order for hearing.—Filed June 13, '65.

MATTINGLY *vs.* NYE } No. 150. In equity.

Ordered that this cause be heard on Thursday, June 15th, 1865, provided a copy of this order be served on the solicitor for the defendants before that day.

By order of the Court.

In the Supreme Court of the Dist. of Col.

Decree dismissing bill and appeal.—Filed 15 *June*, '65.

GEORGE MATTINGLY *vs.* J. W. NYE *et al.* } No. 150. In equity.

This cause coming on to be heard on the bill, answers, and testimony taken in the cause and the agreement of counsel, it is, this 15th day of June, 1865, adjudged and decreed by the court that the

bill of complaint be dismissed, and from the judgment and decree of the court, the complainant prays an appeal to the Supreme Court of the District of Columbia, in general term, which is accordingly allowed.

By order of the court.

In the Supreme Court of the District of Columbia.

Decree of gen'l term, May 15, 1866.

GEORGE MATTINGLY
vs.
J. W. NYE, JOHN C. HARKNESS, AND OTHERS. } On appeal.—150. Equity.

This cause coming on to be heard on appeal on the argument of counsel, and the same having been fully heard, and considered by the court, on consideration thereof, it is by the court ordered, adjudged, and decreed that the decree of the Chancery Court in said cause be, and the same is hereby, in all things fully confirmed, and the said bill of said complainant be dismissed, and that the said complainant pay the costs of this appeal, to be taxed by the clerk of this court.

May 15, 1866.

Appeal bond.—Filed 25 *May*, '66.

Know all men by these presents that we, George Mattingly and George E. Mattingly, are held and firmly bound unto John W. Nye in the sum of five hundred dollars current money, to be paid to the said Jno. W. Nye, his executors, adm'rs, and assigns, to which payment, well and truly to be made and done, we bind ourselves,
105 our heirs, executors, and adm'rs, jointly and severally, firmly by these presents. Sealed with our seals and dated this 22d day of May, A. D. 1866.

Whereas the above-bounden George Mattingly hath prosecuted an appeal to the Supreme Court of the United States, to reverse a decree rendered by the Supreme Court of the District of Columbia, in a cause in equity wherein said George Mattingly was complainant and said Jno. W. Nye, defendant:

Now, the condition of the above obligation is such, that if the said George Mattingly shall prosecute his said appeal with effect, and answer all costs if he shall fail to make good his appeal, then this obligation shall be void; it shall otherwise be and remain in full force and virtue at law.

[SEAL] GEO. MATTINGLY.

Witness:
WALTER S. COX.
[SEAL.] GEO. E. MATTINGLY.

I approve the sureties named in this bond, May 25th, 1866.
A. B. OLIN.

GEORGE MATTINGLY
vs.
J. W. NYE AND OTHERS. } 150 equity.

The complainant, by his attorney, Mr. Cox, prays an appeal
106 from the decree pronounced on the 15th of May, 1866, to the next term of the Supreme Court of the United States, and the same is allowed, as prescribed by law.

By order of the court.

SUPREME COURT OF THE UNITED STATES.

No. 165.

DECEMBER TERM, 1868.

GEORGE MATTINGLY, APPELLANT,

vs.

J. W. NYE AND J. C. HARKNESS.

ADDITION TO RECORD.—FILED OCTOBER 2, 1869.

In the supreme court of the District of Columbia.

MATTINGLY *vs.* HARKNESS ET AL. } No. 150.—Equity.

Exhibit H, No. 1.

WASHINGTON, *January* 5, 1857.

SIR: In answer to your request for me to state my knowledge of the situation of a lot of public ground at the corner of Pennsylvania avenue and 3d street, which President Tyler in April, 1843, leased unto Mr. J. W. Nye for ten years, and what improvements Mr. Nye made thereon, I state that, when Mr. Nye obtained the lease, he showed me the lease, and wanted me to assist him with means to make said improvements. I examined the premises and furnished him lumber to the amount of $630, to make a fence around the lot and to build a carriage-house and stable, and also loaned him three hundred dollars to assist him in making said improvements, taking a mortgage or assignment of said lease to secure the payment, giving him from one to two years to make the payments. His lease specified what improvements he was to make. Having an interest in seeing it faithfully done, I paid particular attention to the improvements, and his progress in making them. He filled up the old bed of Tiber Creek, from the avenue to the canal, which I have no hesitation in stating, in my opinion, was more work than it would be to fill up the branch the same distance where the creek now runs. He made a sewer through the lot from the avenue to the creek, I was informed, about 250 feet in length. He filled up along the avenue between the pavement and the fence, from 3d street to the creek, a depth, I should think, would average between one and two feet—say eighteen inches. He planted a row of shade trees along the avenue and 3d street, and put boxes around them. He enclosed said lot with a substantial, close, and high board fence, and built a carriage-house and stable, south of Missouri avenue, two stories high, with stalls for sixteen hourses. On all

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the ground north of his carriage-house, and between that and the avenue, he put a large quantity of excellent soil; I should think it would average from nine inches to one foot deep; and I understood that he put into said ground a large quantity of manure, which he obtained in different places, besides all made at his own stable by his own horses and those he kept at livery; and I consider the ground in as high a state of cultivation as any ground I ever saw; and in 1846 he raised as large a crop of corn and vegetables on said ground as I ever saw grow anywhere; and which was the only year he was permitted to cultivate it before the Commissioner of Public Buildings deprived him of the lot. Some time, I think, in 1845, before the Commissioner (Major Noland) left the office, I enquired of him whether Mr. Nye had satisfactorily fulfilled his contract. He said that he had to his fullest satisfaction, all except the small corner south of his carriage-house, which he was willing he should let remain, as it was for room for his horses and carriages, as he could do that at any time before the expiration of his lease.

Previous to the successor of Major Noland, or a subsequent commissioner depriving Mr. Nye of the lot, Mr. Nye had settled with me and released the lot from the mortgage or assignment, so that I had not at that time any claim on, or interest in, said lot; and I have no interest whatever in this claim now pending before Congress.

Very respectfully,

GEO. MATTINGLY.

To L. W. McKNEW, Esq.

Whereas the above letter, marked Exhibit H, No. 1, and referred to in the answers of the defendants, Harkness and Nye, in this case, was inadvertently omitted from the record in this case, it is hereby agreed that the same shall be printed in the defendants' brief and considered as a part of said record.

COX & PHILIPS,
Of counsel for Appellants,
BRADLEY, *for Appellee.*

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COX & PHILIPS,
Of counsel for Appellants,
BRADLEY, *for Appellee.*

In the Supreme Court of the United States.

MATTINGLY, Compl't and Appellant,
vs.
NYE, HARKNESS, *et al.*
} *No.* 165.

Appellant's Brief.

This appeal grows out of a bill in chancery, filed in the Supreme Court of the District of Columbia, by the appellant as a judgment creditor of J. W. Nye, one of the defendants, to declare fraudulent and void a voluntary conveyance made by Nye to one Harkness, another defendant, as trustee for the benefit of his (Nye's) wife and children, defendants, while he was largely indebted at the time to complainant on the debt recited in the bill, and to others.

The complainant and defendant, Nye, as appears from both bill and answers, had had many transactions for the loan of money to the defendant, and to secure the payment of which, the defendant made several assignments of various claims he had against Congress for services performed for them; the defendant contending that these assignments were made in payment and satisfaction of the indebtedness between them, and the complainant, denying it. There is conflicting testimony on this point. The assignments themselves are entirely silent upon their being in satisfaction of the indebtedness secured by them as claimed by the defendant; and several witnesses, on the part of the complainant, (pages 21, 25, 27 of the record,) swear that after the assignment, referred to in the answer, as given in payment of the claim, defendant, Nye, still admitted he was indebted to complainant. In addition, it is extremely doubt-

ful that complainant would have been the purchaser of such claims, when they had not been acted upon by Congress for so many years. Defendant, Nye, on the other hand, affirms in his answer that they were so received; and produces a statement signed by complainant, that he had no interest in a certain claim, which claim, it is not contended, was assigned to the complainant; and the further statement that defendant, Nye, did not owe him anything. This statement was signed by complainant (as explained by his testimony, page 27,) at the instance of the defendant, who desired to use it as an inducement to Congress to pay his bill for services rendered them.

A further defence of usury to the original indebtedness is set up in the answer, and, for the sake of this argument, may be considered as admitted.

To all this, it is answered by the complainant, that he is a judgment creditor who has exhausted his remedy at law, and if these defences are true, they were legal, and might and should have been made in the suit at law in which judgment was obtained. (Hungerford vs. Sigerson, 20 How., 156.)

The defendant, Nye, if it was true that complainant had accepted the assignments of the claims against Congress as payment and satisfaction of the indebtedness, could have shown these facts before the court at law, and having failed to make the defence, he and all those claiming in privity with him are estopped from denying that there was an indebtedness due for the amount of the judgment, unless he was prevented by fraud, accident, or wrongful act of the other party, without any negligence or fault on his own part—which is not pretended in this case.

This estoppel of judgment recovered applies with equal force to the defence of usury made in the answer.

Nor can the other defendants avail themselves of it. (Austin vs. Chittenden, 33 Vermt., 553.)

This defence of usury is purely personal, and is not available to persons occupying the position of bona fide purchasers for value, (Stephens vs. Muir, 8 Ind., 352; 4 Dana, 177,) nor to heirs, sureties, devisees, and representatives. (The Mechanics' Bank vs. Edwards, 1 Barb, 271.)

The signing by the complainant of the statement prepared by the defendant to be presented to Congress, and in which is stated, that defendant owed complainant nothing does not vitiate the claim of the complainant to be paid out of the money appropriated.

The defendant's claim was for improving the lot in this city known as the Botanical Garden, immediately west of the Capitol, and the representation as to whether the defendant was indebted to the complainant could have no fair or necessary influence upon the payment of a just debt due defendant. Fraud, in order to vitiate, must be such that it appears the party was misled to his prejudice or injury. Courts of Equity do not relieve against deceptive acts which are followed by no loss or injury. (Young vs. Bumpas, 1 Freeman, 241.

Besides, it does not appear that Congress was in the slightest influenced by the representations of the complainant that defendant was not indebted to him.

These defences not being available the right of the complainant to the relief prayed is perfect.

It is admitted by the answers that the deed for the benefit of the wife and children was voluntary; that defendant was possessed of no other property, and this debt was due long before the conveyance.

It is therefore respectfully submitted that the decision of the court below ought to be reversed.

W. S. COX,
S. L. PHILLIPS,
Of Counsel for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 165.

GEORGE MATTINGLY

vs.

JOHN W. NYE, JOHN C. HARKNESS, AND OTHERS.

This is an appeal from a decree made by the Supreme Court of the District of Columbia, dismissing complainant's bill.

The history of the case is as follows:

Mattingly, in his bill, sets up at page 1, that he, at various times, beginning as far back as the year 1843, lent various sums of money to the defendants, which, in the year 1853, amounted to $1,655; and Nye gave him an order on J. M. McCalla, his agent in prosecuting *certain claims* before Congress, for that amount, of which he never received but $25.

That in the year 1857 Nye received from the United States $3,200 in payment of a portion of said claims, and did not pay any portion of it to him, Mattingly, but fraudulently applied the money to purchase certain property in the city of Washington.

That on the 21st July, 1860, he made a further loan to Nye, and Nye gave him his written acknowledgment that he then owed him $2,450. The assignments, of the several

claims, and the written acknowledgment, are on pp. 3, 4, and 5 of the Record.

That he brought suit (p. 2) on this acknowledgment, and recovered judgment on the 10th of June against Nye, for $2,450, and interest from 21st of July, 1860, and costs; that a *fieri facias* was issued on the judgment out of the Supreme Court of the District of Columbia, directed to the Marshal of the United States for the District of Columbia, by whom the writ was returned "*nulla bona.*" There is no copy of the judgment, or of the writ, thus set up, as the foundation of his claim, exhibited with the Record, nor any proof given of their ever having existed.

He says (p. 2) this acknowledgment includes the prior debt of $1,650; and he does not know that Nye has any other property out of which the said judgment can be satisfied except that which is thereinafter mentioned.

That after the said debt of $1,650 was due, and after Nye received the money from the United States in the year 1857, he, with that money, purchased lot 30, in square 367, in the city of Washington, and had it conveyed to the defendant, John C. Harkness, in trust for the sole and separate use of Mary Nye, wife of said John W. Nye, and in default of any disposition of the lot by her, to Mary and Luther Nye, children of the said J. W. and Mary Nye, all of whom are made defendants. There was, apparently, an outstanding prior incumbrance on the property thus conveyed, and the parties apparently interested therein, were also made defendants to clear the title.

The bill prays a sale of this lot to satisfy the complainant's judgment. Neither of these deeds was offered in evidence.

John W. Nye answered the bill, (p. 12,) and admits that during 1843, and up to 1853, complainant lent him, at various times, small sums of money, for the use of which

complainant charged him as high as five per cent. a month, and to secure the payment thereof, and the *interest thereon as aforesaid*, he gave a certain order to complainant on J. M. McCalla for $1,455, to be paid out of any moneys that might come to his (McCalla's) hands *from a certain claim* against the United States which he held as assignee of Peter Bargy and Hugh Stewart, which order was dated 3d November, 1853, *and was accepted by complainant in full satisfaction of all claims whatever against this defendant up to that time;* and on the same day, and after that order was given, the complainant advanced him $100, for which he gave him another order on said McCalla for $200, to be paid out of the same claim, or from any moneys which might come to McCalla's hands from a certain other claim for furnishing horses and carryalls for the 28th Congress, which was accepted by complainant as a full satisfaction and payment of the hundred dollars so advanced. This statement as to the two orders corresponds precisely with the exhibits filed by complainant, pp. 3 and 4.

He proceeds, and says he gave no other order to the complainant.

That afterwards he received from the United States $3,200, on an entirely distinct and separate claim "for improvements made upon certain grounds belonging to the Government, and which were taken for public use;" that on the 5th of January, 1857, the complainant being called on for his opinion as to the merits of said claim, and as to any interest he had therein, declared, in writing, that he had no interest whatever in said claim, and in effect that defendant did not owe him a cent, and he files a copy of that statement, marked H, and to be found in the amendment of the Record.

That he applied this money, first to the payment of all the debts he then owed, and the residue he placed in the hands of the defendant, Harkness, instructing him, after

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That he applied this money, first to the payment of all the debts he then owed, and the residue he placed in the hands of the defendant, Harkness, instructing him, after

paying any other claim which might be presented to him, Harkness, to invest this residue (p. 14) in purchasing a home for his (the defendant's) family; that the facts of the appropriation of this money, and of his receiving it and putting it in the hands of said Harkness, were publicly well known, and complainant never made any demand on him or Harkness.

That with this residue Harkness did purchase, as a home and shelter for the then suffering family of defendant, and had it conveyed as stated in the bill, the lot therein described, and at that time he, Nye, did not owe the complainant anything whatever.

That afterwards, in the year 1860, he gave the complainant the order, (Ex. B, p. 4;) that at that time the claim therein mentioned had passed the Senate, and had received the unanimous consent of the Committee of the House of Representatives to which it had been referred; *that the complainant accepted that order in full satisfaction*, and in order to secure a larger interest in said claims, gave him a further consideration of $200, for which he gave complainant the assignment marked B, (p. 4.)

That at the time the suit at law was brought he was laboring under great nervous excitement, but did confer with an attorney, and intended to employ him, but before the trial he was attacked with typhoid fever, and at the time of the trial was confined to his bed with that fever, and judgment was rendered against him by default.

John C. Harness also answers at p. 9: He knows nothing of the relations between Mattingly and Nye; corroborates Nye's statement as to the payment of his debts out of the $3,200 received from Govenment; says that the creditors of Nye were diligently watching the action of Congress on the petition of Nye and the allowance thereof, and so soon as the same was allowed and paid, the proceeds thereof were placed in the hands of this defendant to pay his said

creditors, and he did, in fact, apply the same to the payment of the debts of Nye, which were presented to him, and Mattingly did not present any claim, nor did he hear one word of his having any claim on said Nye.

He admits the purchase of the property named in the bill, and the conveyance of it to him on the trusts therein stated.

Decrees by default were entered against the other defendants; testimony was taken, and the case regularly heard.

The material parts of the testimony may be condensed as follows:

The first piece of proof (pp. 16 and 17) is a bill of sale from Nye to Mattingly, dated 1st June, 1843, containing, (p. 17,) among other things, the following: "And the use of a lot of ground leased to me by the President of the United States on the 29th day of April, 1843, and all the buildings and improvements thereon, during the term I hold said lease; and also to *erect for said Mattingly* a carriage-house and stable forty by twenty-eight feet, said Mattingly furnishing the materials for the same, said lot of ground lying," &c., "and said Nye to have the use of said lot of ground, carriage-house and stable, by paying to the said Mattingly fifteen dollars per month therefor. The condition of this obligation is such, that if said Nye shall pay to said Mattingly *fifteen dollars per month* from the date hereof, and *eight* hundred dollars on or before the 1st of July, 1844," Mattingly to release every thing in the deed, including the carriage-house and stable. These improvements on this leased ground, and the improvement of the ground itself, is what the $3,200 was paid for to Nye in 1857.

In 1853, Nye gave to Mattingly the assignment or orders A, pp. 3 and 4, for $1,455 and $200.

The next is Ex. H, No. 1, in appendix.

In that Mattingly says: "I examined the premises and furnished him with lumber to the amount of $630, to make a fence around the lot and to build a carriage-house and stable, and also loaned him $300 to assist him in making the said improvements, taking a mortgage or assignment of said lease to secure the payment, giving him from one to two years to make the payment." (We have just seen he took a lien for only $800, at one year.) "Previous to the successor of Major Noland, or a subsequent Commissioner depriving Mr. Nye of the possession of the lot, *Mr. Nye had settled with me and released the lot from the mortgage or assignment, so that I had not at that time any claim on, or interest in, said lot, and I have no interest whatever in this claim now pending before Congress.*"

The only settlement given in evidence, prior to 1860, is the one marked A.

Mattingly and Nye were both examined as witnesses.

Mattingly, p. 26, says: "In 1843, I furnished Mr. Nye with *money* and *lumber* to the amount of eight hundred dollars, for which he gave me this paper, marked Exhibit M, (pp. 17 and 27.) This account run on from June, 1843, to June, 1845; and the accumulation of rent, according to the agreement M, made up the two amounts of $1,455." "This pamphlet, *which has*, amongst other letters, *a letter of mine purporting to be a certificate, dated January* 5, 1857, was, if it was intended for the use here attempted to be made, obtained under fraud." "The letter will speak for itself. It can be obtained; it is in the Treasury Department. I think I saw it there the day I was looking for those orders." "Upon that certificate, and others in that pamphlet, he got from the Government, some time in January following, the sum of $3,200, out of which he never paid me a cent."

At p. 29, cross-examination, he says: "The account of eight hundred dollars, furnished in 1843 to Mr. Nye, was for *money and lumber*, *both* furnished him. I think I did make

further advances between 1843 and 1845, though I do not recollect it." "It was the intention that the fifteen dollars a month was to be in lieu of interest. The $1,250 order, given in 1845, must have been for this order in 1843, and the $200 must have been for other advances." "The $200 was given for the $100 advanced by and in consideration of advantages, benefits, and favors I had done him."

W. G. W. White, a witness produced by complainant, (p. 23,) was a creditor of Nye, and had an order from him on the Bargy claim. At p. 24, he says: "I understood from him (Nye) and Mr. Mattingly both that he had given Mr. Mattingly a similar order on the Bargy claim. Mr. Mattingly brought this order to me to file in the Treasury, which I did. *That order in my favor was taken by me in full satisfaction of my claim on Mr. Nye. I understood Mr. Mattingly that he had received from Mr. Nye the order in satisfaction of his claim.*"

The defendant, J. W. Nye, was also called as a witness for the complainant. On his cross-examination, at p. 26, he says: "At the time I made these assignments to Mr. White and Mr. Mattingly, Mr. White offered that if I would give him two dollars for one, on assignment of that Bargy claim, he would take it in full settlement of his claim, on the condition that I would, on the passage of that claim, give him a legal right to draw the money. Mr. Mattingly made me the same offer in regard to his, and I likewise gave him *and* them an assignment, which was a final settlement of their claims, only, on the passage of the claim, I was to give them legal authority to draw the money."

He was afterwards called as a witness for the defence, and, at p. 34, he says: "In June, 1843, Mr. George Mattingly agreed to furnish me lumber to build me a stable and carriage-house on a lot, &c., and lumber to enclose said lot, and to furnish me $300 in money—the money to be paid in instalments of fifty dollars per month, and to

allow me two years to pay the money, and for the lumber, on *condition* of my paying fifteen dollars per month for the use of the $300 in money, and a *sufficient price put on the lumber to cover the interest.* To secure the payment thereof, I gave him a mortgage of the lease of this public ground and other property; and, in drawing the mortgage, (for a blind,) this fifteen dollars per month, for the use of the $300, was put down at fifteen dollars per month for the use of the stable. This fifteen dollars, or five per cent. per month, for the use of the $300, I paid regularly and punctually, until March, 1845."

This statement stands uncontradicted by Mr. Mattingly, and, taken with other circumstances in the case, is to be taken as true. He then proceeds with the detail of his transactions with complainant down to near the middle of p. 36, where he says: "During the 28th Congress, a select committee was raised by a unanimous vote of the House to make a final settlement of my avenue or Bargy claim, which committee unanimously reported a bill in my favor; and, in June, 1845, Mattingly offered to take an order on the Treasury Department, to be paid out of this avenue claim whenever it should pass Congress, and payable at the Treasury, provided I would give him the order on the claim of twice my indebtedness to him, and to receive it in full satisfaction of all I owed him, with the exception of the order I had given him on the "carryall" claim, and to have no further claim on me for any of this indebtness, except, after the passage of the act by Congress, I bound myself to give him a legal power to draw the money. I complied with his offer, and gave him the order on the Treasury for double my indebtedness to him, and bound myself that I would, immediately after the passage of the act, give him legal power and authority to draw the money; but, from that day to this, the bill has not passed Congress, though it has been reported unani-

mously in my favor in every Congress except the one just expired, during which it has not been acted upon by the committee. At the time I gave Mattingly, in 1845, an order on the avenue claim and on the carryall claim, in full satisfaction of all the claim he had against me, I had no claim against the Government whatever for improving this lot of public ground. * * I was not deprived thereof till 1848. The first time I ever brought forward any such claim was in June, 1856," p. 37. Mr. McKnew, who was his agent prosecuting the claim, "wrote a note to Mr. Mattingly requesting a statement of all he knew in regard to said improvements, to be laid before the Senate as evidence, and I carried him the letter. * * I called on him next day, and, without a solitary objection on his part, he gave me a written statement, of which the printed statement in pamphlet, headed lease of a public lot of ground," (the same paper in the appendix to the record in this case,) "pp. 6 and 7, is a true and exact copy, and addressed to Z. W. McKnew, Esq., dated January 5, 1857."

He then proceeds in detail to contradict Mattingly's testimony about that paper, and with a long narrative of his transactions with Mattingly, (which are amusing, if not instructive, as to this particular case,) at pp. 38 and 39, he gives his version of how he came to make the assignment to Mattingly on p. 4, which furnishes the basis of this proceeding, and for which he says he only received $100 in cash and $100 in an order for groceries.

On this statement of the case and the evidence it will be maintained—

First. That the contracts between the complainant and defendant, Nye, are all tainted with the vice of usury in their inception and continuation, and are void.

Second. That inasmuch as Nye is not seeking any relief in equity against a judgment at law, but complainant is

asking the aid of a Court of Equity to reach the equitable estate of Nye in real estate, and to subject it to execution on a judgment obtained against Nye, on this usurious contract, (a judgment obtained by default when the defendant was prevented by a dangerous illness from defending the case,) he may now, in this Court, set up that defence.

Third. But, if there were no usury in their various transactions, the whole of the indebtedness of Nye to Mattingly, prior to the purchase of the property sought to be reached by this bill, had been satisfied by a sale and transfer of an interest in the other claims mentioned in those assignments, and Nye was not indebted to Mattingly.

Fourth. Nye's last assignment to Mattingly could not override the trust created in Harkness, so as to subject that property to his debts, inasmuch as that trust was created for a valuable consideration when he was not indebted, and was irrevocable.

JOS. H. BRADLEY,
For Appellee.